Supreme Court of the United States

OCTOBER TERM, 1918.

No. .

JACOB ABRAMS *et al.*, PLAINTIFFS-IN-ERROR,

vs.

THE UNITED STATES.

N ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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Writ of Error and Order Allowing Same.

UNITED STATES OF AMERICA, ss.:

The President of the United States of America, to the Judges of the District Court of the United States, for the Southern District of New York,

GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer, plaintiffs in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as is said and appears by their complaint, We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, DO COMMAND YOU, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C., within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 28 day of October, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

ALEX. GILCHRIST, JR.,
Clerk of the District Court of the United States of America, for the Southern
(SEAL) District of New York, in the Second Circuit.

The foregoing writ is hereby allowed
nunc pro tunc Jan. 17, 1919.
AUGUSTUS N. HAND,
U. S. District Judge.

Indictment.

DISTRICT COURT OF THE UNITED STATES OF AMERICA

for the

SOUTHERN DISTRICT OF NEW YORK.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City and County of New York, within and for the District aforesaid, on the first Tuesday of September in the year of our Lord one thousand nine hundred and eighteen and continued by adjournment to and including the 27th day of September in the year of our Lord one thousand nine hundred and eighteen.

SOUTHERN DISTRICT OF NEW YORK, ss.: The Grand Jurors of the United States of America, within and for the District aforesaid, on their oath present that continuously and at all times from the 6th day of April, 1917, to the date of the presentation and filing of this indictment, the United States has been at war with the Imperial German Government and that from the first day of July, 1918, to the 24th day of August, 1918, and while the United States was at war as aforesaid, Gabriel Prober, Jacob Abrams, Jacob Schwartz, Samuel Lipman, Hyman Rozansky, Hyman Lachowsky and Molly Steimer alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, hereinafter referred to as defendants, at the Southern District of New York and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, to violate the provisions of Section 3, of Title I of the Act of Congress approved June 15, 1917, as amended by the Act of Congress approved May 16, 1918, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," that is to say, said defendants unlawfully and wilfully did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, when the United States was at war with the Imperial German Government as aforesaid, unlawfully and wilfully, to utter, print, write and publish disloyal, scurrilous and abusive language about the form of Government of the

United States, and it was part of said conspiracy that said defendants would attempt to effectuate and accomplish the aforesaid wilful, unlawful and felonious designs and purposes through and by means of uttering, printing, writing and publishing in the Borough of Manhattan, City, County, State and Southern District of New York, and through and by means of circulating and distributing, among persons whose names are to the Grand Jurors unknown, in said Borough of Manhattan, City, County, State and Southern District of New York, many copies of a certain leaflet or circular in the English language and many copies of a certain leaflet or circular in the Yiddish language. (A copy of said leaflet or circular printed in English is annexed hereto marked Exhibit "A" and made a part hereof; a copy of said leaflet or circular printed in Yiddish together with a true translation thereof is annexed hereto and marked Exhibit "B-I" and "B-II" respectively and made part hereof).

OVERT ACTS.

And to effect the object of said conspiracy, in the Southern District of New York and within the jurisdiction of this Court, said defendant, Jacob Abrams, between the 1st day of July, 1918, and the 24th day of August, 1918, did purchase printing presses, type and type cases to be used for printing said leaflets or circulars.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, said defendant, Jacob Abrams, between the 1st day of July, 1918, and the 24th day of August, 1918, did cause said printing presses, type and type cases to be delivered

at the shop located in the basement of the premises No. 1582 Madison Avenue, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, between the 1st day of July, 1918, and the 24th day of August, 1918, said defendants, Jacob Abrams and Hyman Lachowsky, at said printing shop in the basement of said premises, No. 1582 Madison Avenue, in the Borough of Manhattan, City, County, and State of New York, did print said leaflets or circulars.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Hyman Rozansky, did circulate and distribute among persons whose names are to the Grand Jurors unknown, a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Molly Steimer, alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, did circulate and distribute among persons whose names are to the Grand Jurors unknown, a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this court, on or about August 23, 1918, said defendant, Hyman Lachowsky, delivered to said defendant, Hyman Rozansky, a package containing a number of copies of said leaf-

lets or circulars, in the Borough of Manhattan, City, County, State and Southern District of New York; against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided. (Section 4, Title I, Act of June 15, 1917).

SECOND COUNT.

And the Grand Jurors aforesaid on their oaths aforesaid, do further present that continuously and at all times from the 6th day of April, 1917, to the date of the presentation and filing of this indictment, the United States has been at war with the Imperial German Government and that from the 1st day of July, 1918, to the 24th day of August, 1918, and while the United States was at war as aforesaid, Gabriel Prober, Jacob Abrams, Jacob Schwartz, Samuel Lipman, Hyman Rozansky, Hyman Lachowsky and Mollie Steimer, alias Molly Stimer, alias Molly Stiner and alias Mollie Stein, hereinafter referred to as defendants, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, to violate the provisions of Section 3, Title I of the Act of Congress approved June 15, 1917, as amended by the Act of Congress approved May 16, 1918, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States, and for other purposes," that is to say, said defendants unlawfully and wilfully did

conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, when the United States was at war with the Imperial German Government as aforesaid, unlawfully and wilfully, to utter, print, write and publish language intended to bring the form of Government of the United States into contempt, scorn, contumely and disrepute, and it was part of said conspiracy that said defendants would attempt to effectuate and accomplish the aforesaid wilful, unlawful and felonious designs and purposes through and by means of uttering, printing, writing and publishing in the Borough of Manhattan, City, County, State and Southern District of New York, and through and by means of circulating and distributing, among persons whose names are to the Grand Jurors unknown, in said Borough of Manhattan, City, County, State and Southern District of New York, many copies of a certain leaflet or circular in the English language and many copies of a certain leaflet or circular in the Yiddish language, (a copy of said leaflet or circular printed in English is annexed hereto marked Exhibit "A" and made a part hereof; a copy of said leaflet or circular printed in Yiddish together with a true translation thereof is annexed hereto and marked Exhibit "B-I" and "B-II" respectively and made part hereof.)

OVERT ACTS.

And to effect the object of said conspiracy, in the Southern District of New York and within the jurisdiction of this Court, said defendant, Jacob Abrams, between the 1st day of July, 1918, and the 24th day of August, 1918, did purchase printing

presses, type and type cases to be used for printing said leaflets or circulars.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, said defendant Jacob Abrams, between the first day of July, 1918 and 24th day of August 1918 did cause said printing presses, type and type cases to be delivered at the shop located in the basement of the premises No. 1582 Madison Avenue, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, between the first day of July, 1918, and the 24th day of August, 1918, said defendants, Jacob Abrams and Hyman Lachowsky, at said printing shop in the basement of said premises No. 1582 Madison Avenue, in the Borough of Manhattan, City, County and State of New York, did print said leaflets or circulars.

And further to effect the object of said conspiracy, in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Hyman Rozansky, did circulate and distribute among persons whose names are to the Grand Jurors unknown, a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Molly Steimer, alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, did circulate and distribute among persons whose names are to the Grand Jurors unknown, a number of copies of said leaflets or circulars in the

Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Hyman Lachowsky, delivered to said defendant, Hyman Rozansky, a package containing a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County, State and Southern District of New York; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 4, Title I, Act of June 15, 1917).

THIRD COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that continuously and at all times from the 6th day of April. 1917, to the date of the presentation and filing of this indictment, the United States has been at war with the Imperial German Government and that from the 1st day of July, 1918, to the 24th day of August, 1918, and while the United States was at war as aforesaid, Gabriel Prober, Jacob Abrams, Jacob Schwartz, Samuel Lipman, Hyman Rozansky, Hyman Lachowsky and Molly Steimer, alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, hereinafter referred to as defendants, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, to violate the provisions of Section 3, Title I of the Act of

Congress approved June 15, 1917, as amended by the Act of Congress approved May 16, 1918, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," that is to say, said defendants unlawfully and wilfully did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, when the United States was at war with the Imperial German Government as aforesaid, unlawfully and wilfully, to utter, print, write and publish language intended to incite, provoke and encourage resistance to the United States in said war with the Imperial German Government, and it was part of said conspiracy that said defendants would attempt to effectuate and accomplish the aforesaid wilful, unlawful and felonious designs and purposes through and by means of uttering, printing, writing and publishing in the Borough of Manhattan, City, County, State and Southern District of New York, and through and by means of circulating and distributing, among persons whose names are to the Grand Jurors unknown, in said Borough of Manhattan, City, County, State and Southern District of New York, and by circulating and distributing, among persons whose names are to the Grand Jurors unknown, in said Borough of Manhattan, City, County, State and Southern District of New York, many copies of a certain leaflet or circular in the English language and many copies of a certain leaflet or circular in the Yiddish language, (a copy of said leaflet or circular printed in English is annexed hereto marked Exhibit "A" and made a part hereof; a

copy of said leaflet or circular in Yiddish together with a true translation thereof is annexed hereto marked Exhibit "B-I" and "B-II" respectively and made part hereof).

OVERT ACTS.

And to effect the object of said conspiracy, in the Southern District of New York and within the jurisdiction of this Court, said defendant, Jacob Abrams, between the 1st day of July, 1918, and the 24th day of August, 1918, did purchase printing presses, type and type cases to be used for printing said leaflets or circulars.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, said defendant, Jacob Abrams, between the 1st day of July, 1918, and the 24th day of August, 1918, did cause said printing presses, type and type cases to be delivered at the shop located in the basement of the premises No. 1582 Madison Avenue, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, between the 1st day of July, 1918, and the 24th day of August, 1918, said defendants, Jacob Abrams and Hyman Lachowsky, at said printing shop in the basement of said premises No. 1582 Madison Avenue, in the Borough of Manhattan, City, County and State of New York, did print said leaflets or circulars.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Hyman Rozansky,

did circulate and distribute among persons whose names are to the Grand Jurors unknown, a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Molly Steimer, alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, did circulate and distribute among persons whose names are to the Grand Jurors unknown, a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Hyman Lachowsky, delivered to said defendant, Hyman Rozansky, a package containing a number of said leaflets or circulars at the corner of Madison Avenue and 103rd Street, in the Borough of Manhattan, City, County, State and Southern District of New York; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§4, Title I, Act of June 15, 1917).

FOURTH COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that continuously and at all times from the 6th day of April, 1917, to the date of the presentation and filing of this indictment, the United States has been at war with the Imperial German Government and that from

the 1st day of July, 1918, to the 24th day of August, 1918, and while the United States was at war as aforesaid, Gabriel Prober, Jacob Abrams, Jacob Schwartz, Samuel Lipman, Hyman Rozansky, Hyman Lachowsky and Molly Steimer, alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, hereinafter referred to as defendants, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, to violate the provisions of Section 3, Title I of the Act of Congress approved June 15, 1917, as amended by the Act of Congress approved May 16, 1918, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," that is to say, said defendants unlawfully and wilfully did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, when the United States was at war with the Imperial German Government as aforesaid, unlawfully and wilfully by utterance, writing, printing and publication, to urge, incite and advocate curtailment of production of things and products, to wit, ordnance and ammunition, necessary and essential to the prosecution of the war in which the United States now is, and from April 6, 1917 to the date of presentation and filing of this indictment, continuously has been engaged, to wit, said war with the Imperial German Government, with intent by such curtailment to cripple and hinder the United States in the prosecution of said war; and it was part of said conspiracy that

said defendants would attempt to effectuate and accomplish the aforesaid wilfull, unlawful and felonious designs and purposes through and by means of uttering, printing, writing and publishing in the Borough of Manhattan, City, County, State and Southern District of New York, and through and by means of circulating and distributing, among persons whose names are to the Grand Jurors unknown, in said Borough of Manhattan, City, County, State and Southern District of New York, many copies of a certain leaflet or circular in the Yiddish language, a copy of which together with a true translation thereof is annexed hereto and marked Exhibit "B-I" and "B-II" respectively and made part hereof.

OVERT ACTS.

And to effect the object of said conspiracy, in the Southern District of New York and within the jurisdiction of this Court, said defendant, Jacob Abrams, between the 1st day of July, 1918, and the 24th day of August, 1918, did purchase printing presses, type and type cases to be used for printing said leaflets or circulars.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, said defendant, Jacob Abrams, between the 1st day of July, 1918, and the 24th day of August, 1918, did cause said printing presses, type and type cases to be delivered at the shop located in the basement of the premises No. 1582 Madison Avenue, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, between the 1st day of July, 1918, and the 24th day of August, 1918,

said defendants, Jacob Abrams and Hyman Lachowsky, at said printing shop in the basement of said premises No. 1582 Madison Avenue, in the Borough of Manhattan, City, County and State of New York, did print said leaflets or circulars.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Hyman Rozansky, did circulate and distribute among persons whose names are to the Grand Jurors unknown, a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Molly Steimer, alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, did circulate and distribute among persons whose names are to the Grand Jurors unknown a number of copies of said leaflets or circulars, in the Borough of Manhattan, City, County and State of New York.

And further to effect the object of said conspiracy in the Southern District of New York and within the jurisdiction of this Court, on or about August 23, 1918, said defendant, Hyman Lachowsky, delivered to said defendant, Hyman Rozansky, a package containing a number of said leaflets or circulars at the corner of Madison Avenue and 103rd Street, in the Borough of Manhattan, City, County, State and Southern District of New York; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (§4, Title I, Act of June 15, 1917).

FRANCIS G. CAFFEY,
United States Attorney.

Exhibit A.

THE
HYPOCRISY
OF THE
UNITED STATES
AND HER ALLIES

"Our" President Wilson, with his beautiful phraseology, has hynotized the people of America to such an extent that they do not see his hypocrisy.

Know, you people of America, that a frank enemy is always preferable to a concealed friend. When we say the people of America, we do not mean the few Kaisers of America, we mean the "People of America." you people of America were deceived by the wonderful speeches of the masked President Wilson. His shameful, cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington and vicinity.

The President was afraid to announce to the American people the intervention in Russia. He is too much of a coward to come out openly and say: "We capitalistic nations cannot afford to have a proletarian republic in Russia." Instead, he uttered beautiful phrases about Russia, which, as you see, he did not mean, and secretly, cowardly, sent troops to crush the Russian Revolution. Do you see how German militarism combined with allied capitalism to crush the russian revolution?

This is not new. The tyrants of the world fight each other until they see a common enemy—WORKING CLASS—ENLIGHTENMENT as soon as they find a common enemy, they combine to crush it.

In 1815 monarchic nations combined under the name of the "Holy Alliance" to crush the French

Revolution. Now militarism and capitalism combined, though not openly, to crush the russian revolution.

What have you to say about it?

Will you allow the Russian Revolution to be crushed? YOU: Yes, we mean YOU the people of America!

THE RUSSIAN REVOLUTION CALLS TO THE WORKERS OF THE WORLD FOR HELP.

The Russian Revolution cries: "WORKERS OF THE WORLD! AWAKE! RISE! PUT DOWN YOUR ENEMY AND MINE!

Yes friends, there is only one enemy of the workers of the world and that is CAPITALISM.

It is a crime, that workers of America, workers of Germany, workers of Japan, etc., to fight THE WORKERS' REPUBLIC OF RUSSIA.

AWAKE! AWAKE, YOU
WORKERS OF THE WORLD!
REVOLUTIONISTS.

P. S. It is absurd to call us pro-German. We hate and despise German militarism more than do your hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House.

Exhibit B-I.

Original exhibit was printed in Yiddish and is translated in next exhibit.

Exhibit B-II.

(Translation of Exhibit B-I.)

WORKERS—WAKE UP.

The preparatory work for Russia's emancipation is brought to an end by his Majesty, Mr. Wilson, and the rest of the gang; dogs of all colors!

America, together with the Allies, will march to Russia, not, "God Forbid", to interfere with the Russian affairs, but to help the Czecko-Slovaks in their struggle against the Bolsheviki.

Oh, ugly hypocrites; this time they shall not succeed in fooling the Russian emigrants and the friends of Russia in America. Too visible is their audacious move.

Workers, Russian emigrants, you who had the least belief in the honesty of our government, must now throw away all confidence, must spit in the face the false, hypocritic, military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of the war. With the money which you have loaned, or are going to loan them, they will make bullets not only for the Germans but also for the Workers Soviets of Russia. Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not

only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom.

You who emigrated from Russia, you who are friends of Russia, will you carry on your conscience in cold blood the shame spot as a helper to choke the Workers Soviets? Will you give your consent to the inquisitionary expedition to Russia? Will you be calm spectators to the fleecing blood from the hearts of the best sons of Russia?

America and her Allies have betrayed (the workers). Their robberish aims are clear to all men. The destruction of the Russian Revolution, that is the politics of the march to Russia.

Workers, our reply to the barbaric intervention has to be a general strike! An open challenge only will let the government know that not only the Russian Worker fights for freedom, but also here in America lives the spirit of revolution.

Do not let the government scare you with their wild punishment in prisons, hanging and shooting. We must not and will not betray the splendid fighters of Russia. Workers, up to fight.

Three hundred years had the Romanoff dynasty taught us how to fight. Let all rulers remember this, from the smallest to the biggest despot, that the hand of the revolution will not shiver in a fight.

Woe unto those who will be in the way of progress. Let solidarity live!

THE REBELS.

Defendants' Bill of Exceptions.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

(Criminal Branch.)

UNITED STATES vs. JACOB ABRAMS, JACOB SCHWARTZ, SAMUEL LIPMAN, HYMAN ROSANSKY, HYMAN LACHOWSKY and MOLLY STEIMER, alias Molly Stimer, alias Mollie Stiner, alias Mollie Stein, Defendants.	Before: Hon. HENRY D. CLAYTON, *J.*, and a Jury.

New York, October 10, 1918.

APPEARANCES:

FRANCIS G. CAFFEY, Esq., United States Attorney, for the Government. JOHN M. RYAN, Esq., S. L. MILLER, Esq., Assistant United States Attorneys, of Counsel.

HARRY WEINBERGER, Esq., Attorney for the Defendants.

Mr. Ryan: In the first place, the Government desires to withdraw the fifth count of the indictment.

If your Honor please, the Marshall reports that the defendant Schwartz has been taken ill and is

about to be sent to the hospital. I move to sever as to the defendant Schwartz and proceed with the trial against the other six defendants.

The Court: Very well.

Mr. Weinberger: No objection.

The Court: Severance granted.

New York, October 14, 1918.

(The jury was duly empaneled and sworn.)

Mr. Weinberger: May I make my motion before the District Attorney opens?

The Court: Yes.

Mr. Weinberger: I first move to dismiss on the ground that the indictment does not state a crime; and on the further ground that the Espionage Law is unconstitutional, inasmuch as it violates that section which prohibits Congress from passing any law against free speech and a free press, and the right of peaceful assemblage to petition the Government.

I need not state my arguments on that. We had that on the original argument of the demurrer.

I further move that the Government either elect upon which count of the indictment it will proceed on now, or that all of the four counts remaining, the fifth counting having been dismissed, be consolidated; that is, the four remaining counts be consolidated, on the ground that, from an examination of the counts, it is apparent that there was only one act, and, therefore, there can be only one violation of the Espionage Act, and there cannot be made four different violations by the performance of one act of alleged conspiracy.

I submit that under the decisions they cannot proceed to take one sole act and make it four different crimes, under one sole law.

The Court: You have made two motions. The first one is to dismiss the indictment. Your second motion is to consolidate the four separate counts into one. That motion is overruled.

Mr. Weinberger: Exception. I further move to dismiss the indictment upon the ground that the Espionage Law is unconstitutional upon the ground of uncertainty, it not defining the crime exactly so as to inform the defendants or the public as to what acts are prohibited, and, under the common law, nothing could be a crime without an exact definition, so as to inform everybody exactly what is prohibited, and the Espionage Act does not, and I therefore move to dismiss on that ground, that the Espionage Law is unconstitutional.

The Court: That motion is overruled, and you have an exception.

Mr. Ryan opened the case to the jury on behalf of the Government.

HENRY L. BARTH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant Barth, you are a sergeant in the United States Army, are you not? A. I am.

Q. And you are connected with the Board of Intelligence Police of New York City? A. I am.

Q. Do you know these six defendants, sergeant,

Gabriel Prober, Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Molly Steimer? A. I do.

Q. When did you first become acquainted with these six defendants? A. On August 23, 1918.

Q. How did you become acquainted with these defendants? A. At 9 A. M. of the morning of August 23rd, three boys came into our office with pamphlets. Later on another man came in, whom I later learned to be by the name of John Groshan. He had pamphlets, one in Yiddish and one in English. After reading these pamphlets, I asked the boys where they got them from, and they said they picked them up on the sidewalk, at the corner of Crosby and Houston Streets, and they said they were being thrown from a window in the building on that corner. We were assigned to go there by Major Potter, to see who the party was who was throwing these pamphlets out of the window.

Q. Major Potter is the head of the Corps of Military Intelligence Police? A. Yes, sir. We went there and we questioned everybody on the second floor and on the third floor, and finally on the fourth floor, which is occupied by the American Hat Company. We questioned them there for a couple of minutes, and there was a man pointed out to us by the name of Rosansky, and we asked who Rosansky was, and asked to speak to him. He was brought into the office and we spoke to him, and I asked him did he have his registration card. He asked to have his coat brought in, which was taken down and brought in by the foreman under whom he was working. From the inside of the coat pocket he pulled out a little leather case, and we found two of these pamphlets, one in English and one was in Yiddish, such as the boys had said were thrown out

of the window out onto the street. We asked him where he got them? He said that he found that about 10 o'clock that morning lying on the fire escape on the Houston Street side. I asked him to take us over to the window, which he did. At this window there is, I guess, there is ten or fifteen men working. We took him back to the office and there we asked him to take us up to his house where he lived. He took us up to his home where he lived, at 97—I think East 107th Street. We found two pamphlets lying on the dresser in the dining room. Those pamphlets I asked Rosansky to sign his name to, and he said he could not write, so he put a cross on it, and then I asked Mrs. Rosansky to sign her name to it, and she did. These pamphlets we have here.

Q. Is that Hyman Rosansky? A. Hyman Rosansky, the defendant in this case.

Q. Mr. Rosansky, stand up. A. (One of the defendants stands up.)

Q. Is that the man you saw? A. That is him.

Q. Now, Sergeant, did you go alone to this building at Crosby and Houston Streets? A. I was assisted by Sergeant Jenkins.

Q. Sergeant Jenkins, who is a member of the Corps of Intelligence Police? A. He is.

Q. Now, Sergeant, did you notice the pamphlets that you found on Rosansky? How were they printed? A. One in Yiddish and one in English.

Q. You spoke of finding pamphlets in the residence of Rosansky? A. We did; we found two, one in Jewish and one in English, lying on the dresser in the dining room.

Q. Have you got the address of that residence? A. 97 East 107th Street. If I recall rightly, that is the address.

Q. Now, after finding these pamphlets at the residence of the defendant Rosansky, what did you then do? A. I asked the defendant to tell us where he got those pamphlets. "Well," he said, "Well I will tell you. I got them from four men last night." I said, "Who are the men?" "Well," he said, "I don't know all their names," he said, "I only know the name of one." So I told him to tell me his name, and he told me some name, but I could not understand it, and I asked him to write it, and he said he could not write it, so I told his wife to write it and she wrote it, wrote the name Lachowsky on this pad that I have here (producing).

Q. Did she write it in his presence? A. Yes, sir.

Q. Sergeant, was Sergeant Jenkins with you during this whole time, continuously? A. He was there, and Sergeant Murphy was in that home, that is, he was up to Rosansky's home.

Q. Now, after this conversation with Rosansky, what then did you do? A. Well, he said he didn't want to say any more in front of his wife, and he would tell us on the way downtown. So we took whatever we wanted, with his permission, and we went into our automobile that we had outside, and we rode down towards headquarters, where our office is, at 240 Center Street, and on the way down he told us how he met these men and how, the night before, they had given him this package and told him to throw it out of the window from where he worked, and that they had packages, and that they were going downtown that night and throw them out downtown; and he also stated that this—that he has an appointment with these same four men at half-past 7 that night. So we made arrangements, after we took the defendant to headquarters—he made a statement there, just as he had told us,

and we made arrangements to go up there at half-past 7 that night where he made this appointment to meet these other four men, at 104th Street and Madison Avenue.

Q. Just a minute. Whom did he make that statement to? A. Detective Jenkins, myself—and then he made a statement to Colonel Biddle and Inspector Tunney. He also stated that as to the group headquarters at No. 5 East 104th Street, and that is where the pamphlets are got, and the members of the group, they in turn take them around the city. So at 7 o'clock that night——

Q. Just a minute, Sergeant. What do you mean about the distribution of the pamphlets? What did he say about them, if anything? A. Yes; he told us that he had received the pamphlets from four men the night before, and that he took them to throw out of the windows on the fourth floor, at the corner of Houston and Crosby Streets, those pamphlets that were found on the street by the two boys who had brought them in.

Q. Did he tell you about what time he threw them out? A. He said as soon as he came in there to work, and from the time card, his time card shows this morning he came to work earlier than any other morning; he came to work about fifteen minutes earlier, and we have the time card to show it.

Q. Well, Sergeant, after you brought the defendant Rosansky to your office, Police Headquarters, and he made the statement to Colonel Biddle and Inspector Tunney, you and Sergeant Jenkins, as you have testified to—what then did you do? A. Why, we kept Rosansky with us until about 7 o'clock that night.

Q. Just a minute. When you say "us," to whom are you referring? A. Sergeant Jenkins and myself, and Sergeant Murphy, Sergeant Hastings, Sergeant Meagher—they were all assigned on that day on that work, and they were up at 104th Street and Madison Avenue.

Q. Go on? A. We got out of the subway station at 103rd Street and told Rosansky to go ahead and we would trail along back of him, and we told Rosansky to stand on that corner and watch for these four men that he had mentioned, and point them out.

Q. What corner was that? A. At 104th Street and Madison Avenue.

Q. What corner? A. On the northeast corner. And we spilt up, and I went into the doorway on 104th Street between Madison Avenue and Fifth Avenue. At about twenty-five minutes after 7 a girl came along whom I afterwards learned to be the defendant Molly Steimer.

Q. Just a minute, Sergeant. What side—what corner were you near? A. I was on the southwest corner of—well, I was up the block on 104th Street, on the south side.

Q. Then tell us what happened? A. At about twenty-five minutes after 7, a girl came along whom I afterwards learned was Molly Steimer, and Rosansky came across the street and spoke about a few minutes, and then she left, and she walked east—west on 104th Street, on the north side of 104th Street, and she entered the apartment at—she entered the house at No. 5 East 104th Street, where the group headquarters is. Then we watched, I should judge, about a quarter to 8, when a man came along whom I afterwards learned was Lachowsky, with two packages under his arm, and one of these packages he gave to Rosansky.

Q. After that, Sergeant, what happened? A. Why, after Lachowsky spoke there a few minutes, he left him and he walked up to west—towards the west, on 104th Street, on the north side of 104th Street, up towards the group headquarters, where he was trailed by Sergeant Hastings. The rest of us stood there for a short time, and then about five minutes after that defendant Abrams, defendant Lipman, and Molly Steimer came along east, on the north side of 104th Street, apparently from the group headquarters, and they walked over to the corner where Rosansky was standing, and Lachowsky spoke to them, and they stood there a few minutes speaking, and then Abrams went into the restaurant on the corner, and the other four, Lipman, Molly, Lachowsky and Rosansky, they walked south on Madison Avenue to 103rd Street, east on 103rd Street to Lexington Avenue, where they stood about a minute and spoke, and then Lipman left the party and they, the other three, continued east to—east on 103rd Street to Third Avenue, and then they turned north on Third Avenue to 104th Street, where we placed them under arrest.

Q. Sergeant, when you first saw the defendant Molly Steimer, did you notice her particularly? A. Yes; she had a package under her arm—Lipman had nothing and Abrams had nothing with him.

Q. You are referring to the fact of the three; that is the party of three, coming down 104th Street? A. Yes.

Q. You say that Lipman separated from the other four? A. He did, at Lexington Avenue and 103rd Street.

Q. What sergeant was assigned to follow Lipman, or sergeants? A. Sergeants Hastings and Murphy, I think, took charge of him at Lexington Avenue and 103rd Street.

Q. And you, Sergeant Jenkins and Sergeant Meagher continued on down to the police station with Abrams? A. No.

Q. With Lachowsky, Rosansky and Molly Steimer? A. Yes, sir.

Q. Sergeant, when you got these defendants to the 104th Street station, what did you find on them? A. We found a package of pamphlets on Molly Steimer, a package of pamphlets on Rosansky, and a package of pamphlets on Lachowsky.

Q. How many packages—how many pamphlets approximately were in the packages? A. I should judge a hundred or more.

Q. How were they printed? A. About half and half, Yiddish and English.

Q. Jenkins was with you continuously all the time? A. Yes, sir.

Q. I show you two pieces of paper, and ask where you saw them first? A. These are the two that we found on Rosansky at the American Hat Company.

Mr. Ryan: I offer these two pamphlets in evidence, if your Honor please.

(Received in evidence and marked Government's Exhibits Nos. 1 and 2.)

Q. I show you these two pamphlets, Sergeant, and ask you where you saw them first? A. On the dresser in the home of Rosansky.

(Received in evidence and marked Government's Exhibits Nos. 3 and 4.)

New York, October 15, 1918.

HENRY L. BARTH resumed the stand.

By Mr. Ryan.

Q. I show you this package of paper, Sergeant, and ask you where you saw that package first? A. That is the package of pamphlets that Rosansky had on him, that were given to him by Lachowsky, at the corner of 104th Street and Madison Avenue the night of August 23rd.

Q. You found that package on him? A. On Rosansky.

Q. When you searched him at the station house? A. At the station house, the 39th Precinct.

Q. Will you look at that package and see what it contains? A. These are mostly in Jewish—all Jewish. These are all Jewish.

Q. How many, would you say, were in that package? A. I should judge 100 or more.

Mr. Ryan: I offer this package in evidence.

(Received in evidence and marked Government's Exhibit No. 5.)

Q. I show you this package of pamphlets and I ask you when you first saw it. A. The night of August 23rd, after I had taken them from Lachowsky in the 39th Precinct.

Q. About how many were in this package of pamphlets, approximately? A. Oh, 100 or more.

Q. What did they consist of as to language? A. There is one English, and the rest of it Yiddish.

Q. What was the date that you took the package

from Rosansky, the previous package offered in evidence? A. The night of August 23rd.

Mr. Ryan: I offer this package in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 6.)

Q. I show you a copy of the *New York Tribune* dated August 23, 1918, and I ask you where you first saw this particular copy? A. This copy I took from Rosansky's coat pocket that night—not Rosansky, but Lachowsky—on that night Lachowsky showed Rosansky a newspaper at the corner of 104th Street and Madison Avenue.

Mr. Ryan: I offer this paper in evidence.

(Received in evidence and marked Government's Exhibit No. 7.)

Q. I hand you this package of papers or leaflets and I ask you where you first saw that package? A. In the 39th Precinct, taken from Molly Steimer.

Q. What date? A. On the night of August 23rd.

Q. How many leaflets, approximately, does that package contain? A. A hundred or more English and Yiddish.

Q. What proportion of English and what proportion Yiddish? A. I should judge about half.

Mr. Ryan: I offer it in evidence.

(Received in evidence and marked Government's Exhibit No. 8.)

Q. I hand you five leaflets and ask you where you first saw those leaflets? A. These are—they were

brought into our office on the morning of August 23rd by the three boys employed in the building at the corner of Crosby and Houston Streets.

Q. These are the three boys you mentioned, in the first part of your testimony as to pamphlets, that they brought in, that started your investigation? A. Yes, sir.

Q. Those pamphlets are printed how? A. In Yiddish.

(Received in evidence and marked Government's Exhibit No. 9.)

Q. Now, Sergeant, to go back for a moment to the corner of 103rd Street and Madison Avenue, defendants Lachowsky, Rosansky, Molly Steimer and Abrams were on that corner, I understood you? A. 104th Street and Madison Avenue.

Q. Where did they go from there? A. Abrams went into the restaurant at the corner of 104th Street and Madison Avenue, and the others walked south on Madison Avenue to 103rd Street, east on 103rd Street to Lexington Avenue, where they spoke a few minutes, and then Lipman left them and then the others continued up 103rd Street to Third Avenue.

Q. Whom do you mean by "the others"? A. Lachowsky, Rosansky and Molly.

The Court: By "Molly" you mean Molly Steimer?

The Witness: Molly Steimer.

Q. I should have said the five defendants at the corner, two had dropped out and three had gone on and you had followed the other three? A. They went east on 103rd Street to Third Avenue, and con-

tinued on Third Avenue up to 104th Street, where we placed them under arrest.

Q. You have testified to that—what did you do when you got them to the station house? A. We searched them and took the packages that they had from them and marked them for identification, and then ordered a patrol wagon and took them down to our headquarters.

Q. Those are the pamphlets that have been just offered in evidence? A. Yes, sir.

Q. You took them down to headquarters? A. Yes.

Q. What happened there? A. Why, we left 39th Street Precinct about 9 o'clock and took them to headquarters, and arrived there I should judge about half-past 9, and then they were held there until Inspector Tunney questioned them.

Mr. Ryan: I now ask to withdraw this witness, with the privilege of recalling him.

The Court: Very well, and I will permit Mr. Weinberger to cross-examine.

THOMAS F. JENKINS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Miller.

Q. Sergeant, are you a sergeant of the United States army? A. I am.

Q. What assignment at the present time? A. Assigned to the Corps of Intelligence Police.

Q. In New York City? A. New York City.

Q. Are you acquainted with these defendants? A. I am.

Q. Where did you first become acquainted with them? A. On August 23rd, 1918.

Q. How did you become acquainted with them? A. Why, there were some pamphlets thrown out of the window in the building at Houston and Crosby Streets. Some of those pamphlets were brought into the headquarters by three boys, and they were entitled the "Hypocricy of the United States and her Allies."

So Sergeant Barth and myself were sent over to investigate. We started our investigation in the building, and it led to the fourth floor and we spoke —it was the American Hat Company in that building, and we spoke to the foreman about the pamphlets.

Q. What did you do when you reached there? A. We reached the fourth floor, we looked over the time cards and we found that Hyman Rosansky, the defendant, got there earlier that morning than usual.

Q. Did you find his time card? A. Yes, sir.

Q. Did you see it? A. Yes; and we spoke to the foreman about it, and then we asked the foreman to bring Rosansky in; afterwards we went into the office——

Q. Do you know Mr. Rosansky? A. I do.

Q. Can you identify him here now? A. I can.

Q. Which one of these defendants is he? A. The last defendant in the back, with the glasses (indicating).

Q. Will you stand up, Mr. Rosansky? Is this the gentleman here (indicating defendant who stood up)? A. That is him. We asked him for his registration card, and he showed us his registration

card, and in the back—that is, he took out of his coat pocket at that time also—he had two circulars, one in Yiddish and one in English, entitled "The Hypocricy of the United States and her Allies," and we asked him where he got those circulars, and he said he found them on the window at about 10 o'clock. So there was about ten men working around that window. I asked him what he was keeping them for, and I asked him if he had any more, and he said "No." Well, from there we proceeded to Rosansky's house at 96 East 107th Street. We found two circulars in Rosansky's house similar to the ones we found in his possession in his place of business. We asked him where he got those circulars and he said that he knew all about them, but that he would tell us—but he didn't want to tell us in front of his wife. So on the way down to the police headquarters he told us about the circulars, he told us that he had met four men the night before who gave him a package of circulars and told him to throw them out of the window from the place where he worked the next morning, and they also, he said, had some that they were going to distribute that night.

Q. Then where did you take Rosansky, to Police Headquarters? A. We took Rosansky to Police Headquarters.

Q. Who visited Rosansky's apartment with you? A. Sergeant Barth and Sergeant Murphy.

Q. What did you do later in the day? A. Rosansky told us that he was going to meet some more men that night, who were going to give him more circulars. He stated that he was to meet them at about half-past 7, and, in company with Sergeant Barth, Sergeant Hastings, Sergeant Meagher, and a couple of other sergeants, we went to the corner

of 104th Street and Madison Avenue where Rosansky said he had an appointment with these other men.

Q. An appointment with these—which men did he say they were? A. Those were the men that gave him the pamphlets the night before. They were going to give him more that night. Rosansky went with us, and we let Rosansky stand on the corner——

Q. On which corner? A. On the northeast corner of Madison Avenue and 104th Street. After standing there some time——

Q. Where did you stand? A. I stood on Madison Avenue between 104th and 105th Streets.

Q. What became of the other sergeants that were with you? A. Why, we spread out and the other sergeants took different stands so they could observe what went on.

Q. And what did you see from where you stood? A. Mollie Steimer was the first one to approach Rosansky. She spoke to him for a while, and she left him and walked west on 104th Street, and a little while after Lachowsky came along.

Q. From which direction did he come? A. I didn't notice exactly what direction Lachowsky came from—and he gave Rosansky a bundle. That same bundle that he had when I went into the station house with him, and it was a package of these pamphlets entitled "The Hypocricy of the United States and her Allies," both in English and a couple—in Jewish and a couple in English, I believe.

Q. Were the pamphlets identified by Sergeant Barth the ones? A. They are.

Q. Proceed. A. I also observed that Lachowsky took a paper from his pocket and showed it to Rosansky. This paper had an article in it about the

pamphlets that were thrown around the city the night before, and some pamphlets that—they were the same pamphlets that we had found on the defendant.

Q. Go ahead. Then they stood back for a while, and Molly Steimer, Abrams and Lipman came over and joined them on the corner.

Q. First, where did they come from? A. Why they came east from Fifth Avenue and 104th Street.

Q. Did they come along the north side of 104th Street? A. Yes, they came along the north side of 104th Street, and they stood talking for a while, and Rosansky, Lachowsky, Lipman and Molly Steimer left, and Abrams went into a restaurant on the northeast corner of 104th Street. And the other four proceeded, bound toward Madison Avenue, to 103rd Street, and east on 103rd Street to Lexington Avenue, where Lipman left them.

The other three then proceeded to Third Avenue and 103rd Street and north to 104th Street, where they were placed under arrest and brought into the 39th Precinct station house.

Q. Did you leave them there? A. I left them there.

Q. Where did you then go? A. I then went back to 104th Street and Madison Avenue and waited until Abrams and Schwartz left the restaurant.

Q. Who was with you there? A. Sergeants Murphy, Meagher, Santanillo.

Q. What did you see? A. I saw Abrams and Schwartz come out of the restaurant on 104th Street and Madison Avenue and walk west on 104th Street, and when they came up the block they kind of stopped and looked around, you see, to be sure, to see if they were being followed.

They started off again and went to Fifth Avenue, and they went on Fifth Avenue to 105th Street, where they were stopped by Sergeants Murphy and Meagher.

Q. You were present when they were stopped? A. I got there shortly after they were stopped, a couple of seconds.

Q. What occurred there where they were stopped? A. They were asked for their registration cards. Abrams showed us his registration card. We asked them where they lived, and they said they lived at 5 East 104th Street. We asked them to direct us to the place, to take us around there, and we went around to 5 East 104th Street, and went into their apartment. At that time Abrams——

Q. What floor was the apartment on? A. If it was a five-story house it would be the fourth floor. Abrams knocked on the door and he got no response. He said there did not seem to be anyone in, and then he knocked on the door of the apartment next door, and there was a lady came out and he asked her for the key. So shortly after that this lady came out and came to the apartment with a key, and he tried to open the door, though he could not do it. So he handed me the key and I opened the door. We entered the apartment.

Q. What did you find in the apartment as to furniture, and so forth? A. Why, there was very little furniture. It looked more like a place, a place of assemblage, than a residence.

Q. How large an apartment was it; how many rooms? A. Six rooms, I think.

Q. Describe the furnishing of the apartment as well as you can. A. Well, there was very little furniture in the front room, and in the hall——

Q. Off the parlor—what was in there, what was in the parlor? A. Why, I think there was a cot.

Q. Anything else? A. And a few boxes.

Q. What was in the next room? A. The next room was a bedroom. There was one bed in that room.

Q. What did you find in that apartment? A. There was a quantity of those circulars found.

Q. Did you hear Abrams say anything about who paid the rent of the apartment? A. Abrams said that he hired the apartment, and that he paid half of the rent and that certain defendants paid the other half.

Q. Did he state anyone contributed any sums to that apartment outside of those two? A. He said Molly Steimer had a place there.

Q. What do you mean, that she had a place there; that she contributed something to the maintenance of the apartment? A. That she gave money there.

Q. I show you here a package of circulars, some in English and some in Yiddish, and I ask you if you can identify these? A. Yes; that package was found in Abrams' apartment.

(Received in evidence and marked Government's Exhibit No. 10.)

Q. I show you Government's Exhibits Nos. 1, 2, 3 and 4—first, I will show you Government's Exhibits 1 and 2, and ask you if those were the circulars that you found on Rosansky (handing papers to witness)? A. Yes, sir.

Q. I show you Government's Exhibits 3 and 4, and I ask you if those were the circulars found in Rosansky's house (handing papers to witness)? A. They are.

Q. I show you Government's Exhibit No. 5, and I ask you if that is a package of circulars found on Rosansky (handing paper to witness)? A. It is.

Q. I show you Government's Exhibit No. 6, and I ask you if those were the circulars found on Lachowsky (handing same to witness)? A. They are.

Q. I show you Government's Exhibit 8 and I ask you if those were the pamphlets found in the possession of Molly Steimer (handing same to witness)? A. They are.

Q. I show you Government's Exhibit No. 9 and I ask you if those were the circulars which the boys brought into the Police Headquarters (handing papers to witness)? A. They are.

Q. I show you Government's Exhibit No. 7, which is the newspaper, and I ask you if that is the paper found on Lachowsky? A. It is.

Q. When was the date of the happenings that you have described here? A. August 23, 1918.

Q. Were you continuously with Sergeant Barth during this time? A. I was, up to the time that I left him in the station house.

Q. He was not with you back in the apartment? A. No, sir.

Q. Where is 5 East 104th Street located as to the arrangement on the block? A. Why, I imagine it is about 100 feet off Fifth Avenue, between Fifth Avenue and Madison Avenue.

Q. On which side of the street? A. On the north side of the street.

Mr. Miller: Your Honor, I would like to withdraw this witness, subject to recall, the same as Sergeant Barth.

The Court: All right, and I will leave the cross-examination by the defendants until that time, or he may cross-examine him now, if he wishes.

VINCENT A. HASTINGS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant Hastings, you are a sergeant in the United States army? A. I am.

Q. Connected with the Corps of Intelligence Police? A. Yes, sir.

Q. The same corps that Sergeant Barth and Sergeant Jenkins are connected with, who have just testified? A. Yes, sir.

Q. Sergeant, do you know these defendants in this case? A. Yes, sir I have seen them.

Q. When did you first meet the defendants? A. On the evening of August 23, 1918.

Q. How did you come to meet them? A. I was assigned by Major Potter to assist Sergeant Barth and Sergeant Jenkins in one of their cases, which finally developed to be this case.

Q. Then what did you do? A. Then, in company with Sergeant Barth, Sergeant Jenkins and Sergeant Meagher, and Sergeant Murphy and Rosansky we left Police Headquarters and proceeded to the vicinity of 104th Street and Madison Avenue.

Q. What day was this? A. On the evening of August 23, 1918.

Q. About what time? A. Well, we arrived at 104th Street and Madison Avenue about 7 P. M., to the best of my knowledge.

Q. Then what did you do? A. Well, I stationed myself at the southwest corner of 104th Street and Madison Avenue, and the other sergeants stationed themselves in the immediate vicinity and watched Rosansky, who stationed himself on the northeast corner of 104th Street and Madison Avenue.

The points at which we stationed ourselves were points plainly—so that we could observe his actions. We remained there for about twenty-five minutes, and in that time Rosansky walked from the east side of Madison Avenue to the west side, on the north side of 104th Street, and spoke to the defendant Molly Steimer.

Q. Where was she coming from, or where did she come from? A. When I first observed her she was standing on the corner. They held a conversation for about five minutes, in which time the defendant Molly Steimer walked west on the north side of 104th Street.

The defendant Rosansky returned to the northeast corner of 103rd Street. I immediately followed defendant Molly Steimer west on 104th Street, and I observed her enter the premises of 5 East 104th Street.

Q. On which side of 104th Street is that? A. It is on the north side of 104th Street. I stood on the opposite side of the corner, and seen her go into the hall and upstairs. I then returned to the southwest corner of 104th Street, where I stationed myself and kept my eye on Rosansky.

About fifteen or twenty minutes later I observed defendant Lachowsky speaking to the defendant Rosansky. Defendant Lachowsky had in his hands

two packages, also a newspaper. He held a conversation for a few minutes and I observed the defendant Lachowsky hand Rosansky one of these packages. He then took out a newspaper from under his overcoat and pointed to something in the paper, and looked up and down the street a few minutes. He then left Rosansky and walked west on the north side of 104th Street. I immediately followed him to where he went into the premises of 5 East 104th Street. I observed him put his finger on the bell and then leave the hall and then walk down into the street and look up towards the upper floors of this five-story building.

A man came to the window and Rosansky spoke to him in Yiddish, pointed down in the direction of Madison Avenue and 104th Street. He then started back to 104th Street and Madison Avenue, and I immediately returned to my same point where I was standing, keeping him under observation.

Q. Did you find Rosansky on the corner when you returned? A. Rosansky was still standing on the corner.

Q. What corner was that? A. That was on the northeast corner of 104th Street and Madison Avenue.

Q. Go right on from there. A. We kept them under observation for about five or ten minutes, in which time I observed the defendant Molly Steimer coming east on the north side of 104th Street, accompanied by two unknown men, who afterwards developed to be defendant Lipman in this case, and the defendant Abrams.

They all met at the northeast corner of 104th Street and Madison Avenue, and held a conversation that lasted a few minutes, in which time the defendant Abrams left the company of the others

and walked into a store, to the best of my recollection I believe it is a sort of a delicatessen store.

After he parted with the four defendants they walked south on the east side of Madison Avenue.

Q. Locate the store that the defendant Abrams went into. A. This store is on the northeast corner of 104th Street and Madison Avenue, down a few steps from the sidewalk. I didn't go there to see what kind of a store it was, but I believe it was kind of a restaurant or coffee house.

Q. Continue, Sergeant. A. These defendants started down Madison Avenue on the east side of the avenue——

Q. What defendants? A. Defendants Molly Steimer, Lipman, Rosansky and Lachowsky. They walked south to 103rd Street, east on 103rd Street, on the north side of the street, to Lexington Avenue, and they stopped and conversed for a minute or two.

Defendant Lipman parted, returning west on the north side of 103rd Street. I then approached the defendant Lipman and the other defendants proceeded in an easterly direction on the north side of 103rd Street.

Q. Who was with you at that time? A. Sergeant James Murphy, of the Corps of Intelligence Police.

Q. Any other sergeant with you? A. Not with me, at this time. They had proceeded after the other three defendants who had walked east on the north side of 103rd Street. I then approached defendant Lipman and told him I was a policeman and that I was looking for a man and he answered the description of the man I was looking for. This was in the presence of Sergeant Murphy.

I asked him his name, and he said, "My name is Louis Levine." I said, "Where do you live?"

Q. At the time that Molly Steimer first appeared at the corner, as you have testified, did you notice whether she carried a bundle or not? A. She had a newspaper or magazine, to the best of my knowledge; I think she had a magazine under her arm.

Q. Did you notice her on her return to the corner? A. Yes, sir.

Q. Did you notice whether she carried anything under her arm? A. She had a package wrapped in newspaper.

Q. Where did you take the defendant Lipman? A. I asked him to accompany me around to the 104th Street station.

Q. Did you make a search of the defendant Lipman at this station? A. No, sir. If you might permit me to add, Mr. Ryan, on arriving at the office of the Corps of the Intelligence Police, I then searched the defendant Lipman.

Q. I hand you this paper and ask you if you found that paper (handing paper to witness)? A. Yes, sir.

Q. On the defendant Lipman? A. Yes, sir.

Q. I note the date is August 23, 1918? A. I did, sir.

Mr. Ryan: I offer this paper in evidence.

(Received in evidence and marked Government's Exhibit No. 11.)

New York, October 16, 1918.

VINCENT A. HASTINGS resumed.

Direct examination by Mr. Ryan.

Q. Sergeant Hastings, what time did you leave the 39th Precinct Police Station? A. About 9 o'clock.

Q. Sergeant Barth was with you? A. Yes, sir.

Q. What conveyance did you leave in? A. Police patrol wagon, Police Department patrol wagon.

Q. What defendants did you have with you? A. Defendant Molly Steimer, defendant Sam Lipman, defendant Rosansky, defendant Lachowsky and some other defendants arrested by uniformed men of the 39th Precinct in the patrol wagon at the same time.

Q. About what time did you arrive at Police Headquarters? A. Oh, as a matter of about 9.25 or 9.30 o'clock on August 23rd, 1918.

Q. Then these four defendants were examined by Inspector Tunney? A. After we arrived there they were examined by Inspector Tunney.

EDWARD J. MEAGHER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant Meagher, you are a sergeant in the United States Army? A. Yes, sir.

Q. Connected with the Corps of Intelligence Police of New York? A. Yes, sir.

Q. Same corps that these other sergeants who have testified here are connected with? A. Yes, sir.

Q. You know these defendants, Gabriel Prober, Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Molly Steimer? A. Yes, sir.

Q. When did you first meet these particular defendants? A. On the evening of August 23, 1918.

Q. Will you tell the jury just how you came to meet these defendants? A. I was assigned to assist Sergeant Barth and Jenkins in the handling of that case which was brought about by the distribution of seditious literature. At about 7 o'clock, in the company of Sergeants Barth, Jenkins, Hastings, Murphy and myself, and Rosansky, we went to 104th Street and Madison Avenue, and stationed ourselves at various points of observation to note the actions of Rosansky and those whom he might meet.

Q. Where was Rosansky stationed? A. On the northeast corner of 104th Street and Madison Avenue.

Q. Where were you stationed? A. I was on the southeast corner of 104th Street and Madison Avenue.

Q. Go on. A. At about 7.30 o'clock, or about that time, Rosansky walked west to the northwest corner of 104th Street and held conversation with a woman who later developed to be Molly Steimer.

Q. Where did she come from? A. To the best of my recollection she came south on the west side of Madison Avenue. She then left him and walked west through 104th Street and he walked back east to the northeast corner of 104 Street and Madison Avenue.

Q. Just a moment. Did you notice the defendant Molly Steimer, if she carried anything in her hand or under her arm? A. At the time it seemed to me that she had a paper or some periodical, might have been some magazine or something similar to that.

Q. Continue. A. A little while later Rosansky was approached by a man who later developed to be Lachowsky. He handed to Rosansky a package, and while there he showed him a newspaper, and handed him the paper and pointed to the paper or some article in it, just what it was I don't know. He then left him there and walked west through 104th Street towards Fifth Avenue.

Q. Did Lachowsky have a bundle when he walked away himself? A. No, he did not.

Q. Continue your story. A. He walked through 104th Street and returned later with—I do not just remember whether he had the package when he returned or not, but to the best of my recollection after that defendant Rosansky was joined by Lipman, Molly Steimer and Abrams. At that time Molly Steimer had a package in her arms similar to those leaflets.

Q. Did you see from where you were, where Molly Steimer, Abrams and Lipman came from? A. Yes, I could. They came out of a house that later on turned out to be No. 5 East 104th Street, a house near Fifth Avenue.

Q. Then where did they walk? A. They walked east on the north side of 104th Street to 104th Street and Madison Avenue, northeast corner, and joined Rosansky and Lachowsky. They held conversation there a little while, and then Lipman and Lachowsky and Molly Steimer and Rosansky walked south on the east side of Madison Avenue

to 103rd Street and through 103rd Street to Lexington Avenue, where they stopped for a few seconds, perhaps a moment, and then Lipman walked west. Molly Steimer, Rosansky and Lachowsky continued on east to Third Avenue and 103rd Street and then north to 104th Street, when I approached them in company with Sergeants Barth and Jenkins and then we took them over to the 39th Precinct Police Station in East 104th Street.

Q. Sergeant, what then did you do? A. I left the 39th Precinct in company with Sergeants Barth and Murphy for the purpose of going back to apprehend a man who later developed to be Abrams.

Q. By the way, going back to the corner, did you see what became of Abrams? A. He entered a lunch room on the northeast corner of 104th Street and Madison Avenue and went down a few steps, and entered this lunch room.

Q. Do you remember what sergeants went back with you? A. Jenkins, Murphy and myself. We were then joined by Santaniello. We kept this restaurant under observation, or lunch room, until we observed Abrams come out accompanied by another man. We followed them over as far as Fifth Avenue. I crossed to the park wall and observed Abrams and this other man turn north on Fifth Avenue at 104th Street. Sergeant Murphy and I then decided to go over and question them, and ask them for their registration cards. While walking through that street I had observed both Abrams and the other man turning their heads sidewise—They had been turning their heads several times as they walked. When Murphy and I crossed from the west side of Fifth Avenue to the east side of Fifth Avenue and 104th Street I asked Abrams for the registration card, which he gave me.

Q. Then what did you do? A. I asked Abrams what particular reason he had for keeping looking around as they were walking, and he said they looked around down 104th Street as they knew they were being followed. I said, "Where do you live?" And he said, "In 104th Street, 5 East 104th Street." "What floor in 5 East 104th Street?" He said, "Three flights up, come on around and I will show you the place." And we went around to his house.

Q. What sergeants were with you? A. At the time Murphy was the first one to accost him with me, then Santaniello and Jenkins joined us. We walked around to their house at 5 East 104th Street and went upstairs. We went up three flights on the west side rear, and Abrams first tried his own door and could not get any answer. Then he knocked at next door and asked an old woman there for keys, and after considerable talking she finally turned the keys over to Abrams, who opened the door and let us in. He said it was his apartment —his and Schwartz's apartment. I went into the rear room in this place. In the rear room on the floor was a little black sort of a suit case—about that size (indicating), and in it were a lot of these pamphlets printed in English and Yiddish.

Q. I show you Government's Exhibit 10, and I ask you if that is the suitcase you refer to? A. Yes, that is the suitcase.

Q. Are those the pamphlets (handing same to witness)? A. Minus this package (indicating).

Q. I show you that package and ask you where you first saw that package? A. That package I saw in the bedroom—when I questioned Abrams, who occupied the room, he said that he did. That package was lying on the floor of the room alongside, next to a mattress that was laying on the floor.

Q. I show you the contents of that suitcase (indicating). A. Yes, sir; those pamphlets were in there.

Q. By the way, Sergeant, look at this package and tell us how these pamphlets are printed. A. Some are in Yiddish and some in English. About in equal amounts of each.

Q. How many leaflets would you say are in that package? A. Might be one hundred, or a hundred and fifty, something like that. I didn't count them.

Q. Where again did you say this was found? A. That was found in the bedroom. I called Abrams in and asked him who occupied that room, and he said he did, and he would be responsible for anything in the room.

Mr. Ryan: I offer this in evidence.

Mr. Weinberger: No objection.

(Marked Government's Exhibit No. 12.)

Q. Sergeant, will you describe that apartment as well as you can? A. To the best of my knowledge there were six rooms.

Q. How was it furnished? A. Very lightly furnished; as a matter of fact it was hardly furnished. You would not really call it furnished. It seemed more like a meeting place than anything else. The front room to the best of my knowledge had a table with some books on it, also a cot, and another bookstand—that is the front room. The next room was a bedroom. In that room there was a bed. In the next room off the hall, the long hall that runs from that bedroom into a room that might be called a dining room, was a bedroom to the left, that is the room that had the mattress on the floor. The next room was a dining room, that is what took the place,

in my opinion, of a dining room, and in the left-hand corner of that, catacornered, was a closet containing a lot of books and papers. In the center of that room was large boxes like packing boxes, used apparently for desks, and there were also some chairs and a long couch. In the next room, it could be judged as a kitchen, that is what it struck me to be, there was a sink and the like of that in there. And the last rear room is what I understood to be—that is, Abrams told me when I asked him who had that room, who occupied it, he told me Molly Steimer used it. I am very positive that there was not a bed in that room, just a chair and some clothes, women's clothes hanging on the door there.

Q. Now, then, what then did you do after searching the apartment and finding these pamphlets? A. Well, on finding these pamphlets I brought them from the rear room out and asked Abrams whose room that was, who occupied the room where I found them, and which at the time he told me was Molly Steimer. Then I left those pamphlets on the table there in the presence of Sergeants Jenkins —and Murphy I believe was there at the time—I am positive of Jenkins being there.

Q. Well, then, did you with the other sergeants place Abrams under arrest? A. Yes, I did, and we called two taxicabs.

Q. Abrams and Prober was placed under arrest at that time? A. Yes, sir.

Q. Where did you take them? A. To Police Headquarters.

Q. They were there examined by Inspector Tunney? A. Inspector Tunney, yes.

MICHAEL SANTANIELLO, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Miller.

Q. Sergeant, are you a sergeant of the United States Army? A. Yes, sir.

Q. On what assignment are you at the present time, Sergeant? A. Corps of Military Intelligence Police, 240 Centre Street.

Q. Were you on that assignment on August 23rd, 1918? A. Yes, sir.

Q. Are you acquainted with these defendants? A. I am acquainted with defendants Abrams and Prober, and the other defendants I got acquainted with down at Police Headquarters.

Q. How did you become acquainted with defendants Abrams and Prober? A. At about 9 P. M. on August 23rd, 1918, I observed the defendants Abrams and Schwartz come from a lunch room on the northeast corner of Madison Avenue and 104th Street. When they came from this lunch room Abrams and Schwartz looking around——

Q. Who was with you at that time? A. Sergeants Meagher, Murphy, and Jenkins.

Q. What did you do? A. The other three sergeants and myself followed Abrams and Schwartz west on 104th Street, on the north side of the street. When they arrived in the middle of the street between Madison Avenue and Fifth Avenue, they stopped for about one or two minutes and they turned around. Then they proceeded on 104th Street on the north side of the street to Fifth Avenue and also continued on Fifth Avenue on the east side of the street to 105th Street. Then I noticed

Sergeants Murphy and Meagher questioned the defendants Abrams and Schwartz, asking them for their registration cards.

Q. What did you do then? A. Well, they questioned them about a few minutes, and then Abrams and Schwartz accompanied the three sergeants and myself to the apartment No. 5 East 104th Street, the fourth floor rear. When we arrived on the fourth floor Abrams tried to open the door and he was unable to do so. Then he knocked at the door of the next house and some old woman came to the door and he asked for the keys and she gave Abrams the key. Abrams started to open the door, and he could not open the door and I think Sergeant Jenkins or Murphy opened the door and we entered.

Q. Proceed; what did you do then? A. Well, then, we started to search the flat for the purpose of trying to find pamphlets which were distributed the previous day or that same day that we had been working on the case.

Q. Did you find any? A. Well, Sergeant Meagher found the pamphlets in the rear room, and I was present in that rear room of the apartment, the small room, where the small black suitcase was found.

Q. I show you Government's Exhibit 12, and I ask you if this is what was found there at that time (handing same to witness)? A. Yes.

Q. And these pamphlets in it? A. Yes, sir.

Q. Did you find anything else in that apartment? A. Well, I searched the closet in the dining room and found there a pamphlet.

Q. Is that the room which Abrams said was his room? A. Yes, sir.

Q. I show you these pages and I ask you if this is what you found (indicating)? A. Yes, sir.

Q. Where did you find them? A. I marked these for identification, and I found these in the closet in the dining room and right on top of the books, there was about fifty or more books in this closet.

(Marked Government's Exhibit 13.)

The Witness: I brought the pamphlets out and I said to Abrams, "What is this?" He says, "I don't know"; he says, "Everything you find in this house I am responsible for."

Q. What time did you leave for Police Headquarters with the prisoners? A. Why, we left between 10 and 10.15 that evening.

Q. Did you hear Abrams say anything at that time about who paid the rent of the apartment? A. Abrams said that he paid half of the rent and Schwartz paid the other half, in the presence of Prober and another man who was there, with a sandy mustache and a couple of women who were in the dining room.

JAMES J. MURPHY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Miller.

(Corroborates statements of other sergeants.)

JOHN F. GROSHANS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Where did you work on August 23rd, 1918? A. On the third floor of 610 Broadway, on the Houston Street side.

Q. Did that building run from Houston to Crosby Street? A. It runs from Houston to Crosby Street.

Q. Do you recollect the morning of August 23rd, 1918? A. I do.

Q. Where were you about between 7.30 and 8 o'clock on that morning? A. I was in the factory building on the third floor.

Q. Did you see any pamphlets such as have been described in the trial of this case? A. I did have my boy, who told me about it, brought me one.

Q. Did you pay a visit to Police Headquarters on the morning of August 23rd, 1918? A. I did.

By the Court.

Q. You went there with the pamphlet? A. I did.

Q. After reading one of them? A. Yes, sir.

Q. Was it a pamphlet like that (indicating)? A. Yes, sir, identical to this one.

Mr. Ryan: I offer this pamphlet in evidence.

Mr. Weinberger: No objection.

(Marked Government's Exhibit No. 14.)

NATHANIEL SAKS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Where did you work on August 23, 1918? A. I worked at 610 Broadway.

Q. Who for? A. For the New York Tube & Spool Cotton Company.

Q. What floor? A. Well, they occupied the ground floor.

Q. That building runs from Crosby Street to Houston Street, does it not? A. Yes, sir.

Q. Do you recollect the morning of August 23, 1918, about between 7.30 and 8.00 o'clock? A. I do.

Q. Did anything happen on that day that particularly attracted your attention? A. Yes, sir.

Q. Will you state to the jury what it was? A. Well, I happened to come very early that day, and that was about between 7.45 and 8.00, and the place was closed yet, and I was outside with two of my friends—March and Silver, and we were speaking to each other, and I happened to look up, and I noticed something coming down, pamphlets or leaflets, about twenty-five or thirty of them, probably more; and while I worked there five years, and during those five years I never seen anything of the kind happen there, so I was curious and picked up several, after they came down and the first one that I picked up was in Jewish—in Yiddish. Well, I could not make head or tail out of it. Then I picked me some more, and that one happened to be in English, and I read that, and my friends read that, too.

Q. What did you do? A. After then reading those papers, I went to Police Headquarters with those two boys.

Q. Did you have the pamphlets with you? A. Yes, sir; I brought one with me.

Q. Did you see Sergeant Barth, sitting at the table there (indicating), at headquarters? A. Yes, sir.

Q. I show you Government's Exhibit No. 9. Were the pamphlets you saw this morning of August 23, 1918, similar to that pamphlet (handing paper to witness)? A. They were similar.

Q. Did you read the pamphlet in English? A. I did; I read the pamphlet in English.

Q. I show you Government's Exhibit No. 14, and ask you if that is a copy of the pamphlet you found on the street and brought to Police Headquarters? (Handing paper to witness.) A. Yes, sir.

ERNEST PACKER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Mr. Packer, where did you work on August 23, 1918? A. On the sixth floor of 610 Broadway.

Q. That is in the building— A. I was working for Rosen & Company; that is the building at the corner of Houston Street and Broadway.

Q. Mr. Packer, do you recall August 23, 1918, the morning of August 23, 1918, between 7.30 and 8.00 o'clock? A. I do, sir.

Q. Where were you at that time? A. I came to my work—we are supposed to start at 8 o'clock,

and the elevator was not running—was late in starting, and it had not started, and I stopped down there, sitting on a sprinkler hydrant at the corner of Crosby and West Broadway, on the sidewalk, and I should imagine it was about somewhere possibly five minutes of 8, possible ten minutes.

Q. What did you see? A. I happened to look up, and my attention was attracted to the air; and I looked up and saw something was falling; the air was full of these leaflets.

By the Court.

Q. You say the air was full? Were they coming from above? A. They were coming from above and around the corner. I should imagine there was possibly 100 in the bunch. They landed on the sidewalk, and in the street practically at my feet. I picked out one or two of them. I found some of them were printed in Yiddish and some in English. Of course, the English one, I read it; and I picked up two or three and took them upstairs where I was working.

By Mr. Ryan.

Q. I hand you Government's Exhibit No. 9, and I ask you if the leaflets were similar to that leaflet or those leaflets? A. Yes, sir.

Q. You read the one in English, I understand? A. I read the one in English.

Q. I show you Government's Exhibit 14 and I ask you if that is a copy of it?

The Court: That is an exact copy; not only similar, but an exact copy, exactly like that one?

The Witness: That is, to the best of my belief. Of course I cannot read the Yiddish.

Q. Are you saying this is a copy of the English one, exactly a copy of the one that you saw? A. To the best of my knowledge it is.

NELLIE RYAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Miller.

Q. Where do you live? A. 5 East 104th Street.

Q. Mrs. Ryan, what is your occupation? A. Janitress.

Q. At what house? A. 5 East 104th Street.

Q. Are you acquainted with any of these defendants? A. Yes, Mr. Abraham Dean.

Q. Who is Mr. Dean? A. The man sitting right there (indicating).

(Witness goes down and indicates defendant Abrams.)

Q. How did you become acquainted with this defendant Abrams? A. Well, I had a vacant apartment, and he came to look at it.

Q. On which floor was that vacant apartment? A. On the fourth floor west.

Q. Did he come and look at it, on what day? A. On the 17th of June.

Q. Of what year? A. Of this year, 1918.

Q. Did you rent the apartment to this defendant Abrams? A. Yes, sir.

Q. Under what name? A. Abram Dean.

Q. Did he pay you money? A. Yes, sir.

Q. How many months did he pay you, altogether? A. Two.

Q. For what months? A. For June and July.

The Court: For what year?

The Witness: For this year, your Honor.

Q. Did he occupy the apartment in August, 1918, August of this year? A. Yes.

LOUIS J. KEITH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Miller.

Q. Are you a police officer of the City of New York? A. Yes, sir.

Q. Were you here so on August 23, 1918? A. Yes, sir.

Q. In what precinct were you assigned at that time? A. 39th Precinct, 177 East 104th Street.

Q. What was your assignment on the evening of August 23, 1918? A. I was doing reserve at that time, from 8 o'clock until 4 in the morning.

Q. During that time were you called out? A. At about 8.30 o'clock in the evening.

Q. Where did you go in response to that call? A. Myself and three other officers and a sergeant were sent over to 106th Street and Park Avenue.

Q. Who was there besides you? A. Patrolman Sheehan, Patrolman Wisemann, Patrolman Boyle, and Sergeant Kennedy.

Q. What was the cause of that call? A. The station house was notified that there was some disorder over there, a meeting in front of the Star Casino.

Q. When you got there what did you find? A. The entire street, 107th Street between Park Avenue and Lexington Avenue, was crowded with people.

Q. About how many people were there when you got there? A. Oh, I should say there were fully 3,000 or more, it seemed to me.

Q. When you reached there, what were they doing? A. They were very noisy, and there was shouting and singing and general commotion in the street.

Q. What happened when you reached there? A. The sergeant inquired of the man in charge of the hall whether it was permitted for them to enter, and he said no, he would not permit them to enter in there, and the sergeant gave us orders to keep the crowd moving and to move them out of there.

Q. Did you do that? A. We did it as—first, they moved over towards Lexington Avenue, and while moving, they were shouting various things, and singing, and they moved out into Lexington Avenue, through 106th Street west to Park and Madison, where they started to be very noisy, and they were shouting all sorts of things—"We want freedom," and singing various foreign songs, and then a stone was thrown at one of the officers and he was hit on the head, and there was a lot of circulars scattered around the street.

Q. Did you find any circulars there? A. Yes, sir.

Q. I show you Government's Exhibit No. 14 and I ask you if that is a copy of one of the circulars you saw there? (Handing paper to witness.) A. Yes, sir.

FLORENT V. HAERLE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Mr. Haerle, at this time are you a patrolman connected with the Police Department of New York City? A. I am.

Q. What is your precinct? A. 15th Precinct—321 East 5th Street.

Q. Do you recollect August 23, 1918? A. August 22nd.

Q. August 22, 1918? A. Yes, sir.

Q. I show you Government's Exhibit No. 14, and I ask you where first you saw a copy of that leaflet (Handing paper to witness.) A. Between 7.00 and 7.30 P. M. on August 22, 1918, on Second Avenue, near 4th Street.

Q. Did you see any copy of this pamphlet at that time? (Handing paper to witness.) A. Yes, sir.

Q. The same place? How many copies of this pamphlet—I am referring to Government's Exhibit 9, did you see? A. I should judge at that time about fifty or more.

Q. Where were they? A. On the street.

Q. And was there another time when you saw them? A. Yes, sir.

Q. The same day? A. Same day.

Q. About what time? A. Between 10.00 and 10.30 P. M.

Q. At the same place? A. No, sir.

Q. Where were the other pamphlets seen? A. Second Avenue and St. Marks Place.

VINCENT GUIERO, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. I show you Government's Exhibit No. 14 and I ask you if you ever saw a copy of that leaflet before? (Handing paper to witness.) A. I saw this pamphlet on the 22nd of August, at half-past 6

Q. Where? A. Flying through the air.

Q. What place?

The Court: You mean this year when you say the 22nd of August?

The Witness: Yes, sir. At Broadway and 18th Street.

Q. How many of these copies of this pamphlet did you see? A. About ten or fifteen.

New York, October 17, 1918.

JOHN C. DILLON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant, you are a sergeant in the United States Army? A. Yes, sir; the Corps of Intelligence Police.

Q. Do you remember the night of August 23, 1918? A. I do.

Q I show you a paper marked Government's Exhibit No. 11, and I ask you when you first saw

this paper? A. I saw Sergeant Hastings take this, together with a number of other papers, from the person of defendant Lipman.

Q. On the night of August 23, 1918? A. Yes, sir.

Q. Did you hear the defendant Lipman say anything at the time that paper was taken? A. Yes, sir.

Q. What did he say? A. Sergeant Hastings threw the paper across the table to me and said, "John, look at this and see if you see anything of interest." And I looked through the papers, and I saw that circular, and I asked Lipman, "Where did you get this?" And he said, "I wrote it."

Q. Where was this? A. In room 214, Police Headquarters.

Q. Sergeant, do you know these defendants here in court to-day (indicating)? A. I do.

Q. Were you present when the defendant Hyman Rosansky was brought to Police Headquarters at 2.30, on August 23, 1918, at 2.30 o'clock P. M.? A. I was.

Q. Sergeant, you are a stenographer, are you not? A. I am.

Q. The defendant Rosansky was examined at Police Headquarters by Colonel Biddle and Inspector Tunney? A. He was.

Q. Did you transcribe the minutes, the questions and answers? A. I did.

Q. Have you your stenographic book in which you transcribed the questions and answers? A. I have.

Q. And they are a true transcription of what took place at this examination? A. They are.

Q. Will you refer to your stenographic book and read to the jury the questions put to the defendant Rosansky and his answers thereto? A. I will.

The Witness: I have this headed "Statement, 2.30 P. M., August 23, 1918.

"By Colonel Biddle.

"Q. What is your name? A. Hymie Rosansky.
"Q. Where do you live? A. 79 East 107th Street.
"Q. What is your age? A. Twenty-five.

"By Inspector Tunney.

"Q. Married? A. Yes.
"Q. Where were you born? A. Russia.
"Q. What part? A. Brest-Litovsk.
"Q. How long have you been in the United States? A. Eight years.
"Q. When did you come? A. 1910.

"By Major Biddle.

"Q. Do you want to make a statement as to the circulars, of your own free will? A. Yes.
"Q. And tell the whole truth in connection with this matter? A. Yes.
"Q. You came here in 1910? A. Yes.
"Q. Are you an American citizen? A. No.

"By Inspector Tunney.

"Q. Where do you work? A. The American Hat Company.
"Q. At what street is that? A. Broadway, from Bleecker to Houston Streets.
"Q. What time did you come to work this morning, Hymie? A. I don't remember the time.
"Q. About what time did you get to the shop this morning? A. I don't remember the time.
"Q. About 8 o'clock? A. It was before 8.

"Q. When you went to work, what did you have in your pockets? A. I had a package in my hand.

"Q. What did the package contain? A. It was the leaflets.

"Q. Are these two leaflets you had? A. Yes.

"(Leaflets identified and marked 1 and 1-A by stenographer, J. C. D.)

"Q. Where did you get these leaflets? A. From a couple of fellows.

"Q. Do you know their names? A. I know the fellows, but don't know exactly the names. Lachowsky I know by name.

"Q. When did you meet these fellows? A. Quarter-past 9 last night.

"Q. Where? A. 106th Street and Third Avenue.

"Q. What did they say when you met them? A. A fellow came over to me; I went down from the car; he comes to me with a package, and says, 'Here is a package.' I said, 'What kind of a package?' 'Leaflets.' I says, 'What kind of leaflets?' 'It is all right; you don't have to know what kind of leaflets.' 'What I got to do with this?' He says, 'You have got to throw them from the window.'

"Q. Did he tell you from what window? A. From some window where people were passing. He counted them over; I didn't count them; he counted them; the rest of them he told me I could get that night; he made an appoint with me for to-night, half-past 7.

"Q. For where? A. Madison Avenue and 104th Street.

"By Major Biddle.

"Q. Did you have an appointment to meet this man? A. This fellow was to go downtown; that is, to-night.

"Q. To-night? A. Yes.

"Q. How about last night; did you expect to meet him when you went there? A. No.

"Q. Just happened to meet him? A. Yes.

"Q. Did he ever give you another package before this? A. No; only this one.

"Q. Did he tell you why he wanted you to keep it? A. No.

"Q. Did you ever have any other type? A. No.

"*By Sergeant Barth.*

"Q. After you received that package with those pamphlets you took them home? A. No; I left that fellow and I went home.

"Q. Did you take the package? A. Yes.

"Q. You went home with fifty pamphlets? A. Yes.

"Q. You opened the paper and took two out? A. No, it is two he gave me before.

"Q. They were not in the package? A. No, they were separate.

"Q. You put them in your pocket? A. Yes.

"Q. Those two found on the dresser, where are they? A. Those are those two (indicating).

"Q. You put them in your pocket, then later laid them on the dresser? A. Yes.

"Q. Then you went to bed? A. Yes.

"Q. You woke up about what time this morning, half-past 7? A. No, quarter-past 7.

"Q. Did you have breakfast home? A. I never have breakfast home.

"Q. Then you went where? A. In the restaurant and had my breakfast.

"Q. The same restaurant where you eat all the time? A. Yes.

"Q. Where is that restaurant? A. Bleecker Street, corner of Lafayette.

"Q. After your breakfast where did you go? A. Right to the shop.

"Q. What did you do when you went upstairs? A. I took my clothes off. I took my coat off and then I light the dyes.

"Q. And then you took the package? A. Yes, there is another word that I can't explain in English. I took my coat off; I put the package down on the table and went over and light the dyes. Then I lit a cigarette; then I sat there, and in a minute saw the package again, took the package and cut the string, took it over to the window and threw them all out at once.

"*By Major Biddle.*

"Q. You threw them all at once? A. Yes, the fifty.

"Q. The fellow you met told you to distribute them by throwing them out the window? A. Lachowsky.

"Q. Out of what window did you throw them? A. It was on Houston Street.

"Q. After you threw them out, did you stand there? A. I stood in the window and saw the people pick them up.

"Q. Did you throw them out so the people would pick them up? A. Yes.

"Q. Then you went back to work? A. Yes.

"Q. Then you looked out again to see if the people had picked them up? A. Yes.

"Q. Did you see anybody pick them up? A. Yes; I saw a couple.

"Q. Did you go to the shop the same time to-day as usual? A. Yes.

"Q. Did you arrive before anybody else had gotten there? A. Yes.

"Q. You went earlier than usual? A. Yes.

"Q. Did you want to throw them out before anybody came? A. Yes.

"By Inspector Tunney.

"Q. When did you first meet this man that gave you the circulars? How long ago? A. A couple of weeks ago I met the three men.

"Q. You say these men do their own printing; they print themselves? A. Yes. The first time I met them at a concern at Forward Hall, and I meet one of them every night on Second Avenue and 4th Street."

By the Court.

Q. Was there any threat or force used in regard to him to induce him to make that statement? A. None whatsoever.

Q. It was voluntary? A. Absolutely.

Q. No reward offered—no threat made? A. No promise, and no threat whatsoever.

Q. It was voluntarily made? A. Absolutely.

By Mr. Ryan.

Q. Sergeant, I show you Government's Exhibits No. 1 and No. 2, and I ask you if those are the exhibits referred to in the examination? (Handing papers to witness.) A. Yes, sir.

Q. What are they referred to as in the examination? A. As circulars.

Q. I mean in your stenographic notes, how do you identify them? A. I made the circular in English, marked it No. 1, J. C. D.; and I have the circular in Yiddish marked No. 1-A, J. C. D.

Q. And that is the No. 1 and the No. 1-A referred to in this examination? A. Yes, sir.

Q. I show you Government's Exhibit No. 3 and Government's Exhibit No. 4, and I ask you if they were the exhibits referred to in the examination? A. They are.

Q. How are they designated in that examination? A. They are designated No. 3, J. C. D., and I also, for the other one, designated it as No. 3, J. C. D., and I guess they were presented to me at that same time.

Q. Sergeant, these questions and answers are the original notes taken by you on the examination, that you have been reading on this examination? A. The original stenographic notes taken by me at 2.30 P. M., August 23, 1918.

Direct examination (continued) by Mr. Ryan.

Q. Sergeant, you were present at Police Headquarters in the evening of August 23, 1918, and the early morning of August 24, 1918? A. I was.

Q. And you saw these defendants brought to the Police Headquarters? A. I did.

Q. And they were examined at Police Headquarters by Inspector Tunney? A. They were.

Q. Were you present at the examination of any one of these defendants besides Rosansky, which you have already testified to? A. Yes, at Lachowsky's.

Q. Did you act as stenographer at this examination? A. I did.

Q. And have you got the original stenographic notes taken by you, containing the questions put to the defendant Lachowsky, and his answers thereto? A. I have.

Q. Will you read those notes of the testimony and examination to the jury? A. I have this, headed "Statement, 12.06 A. M., August 24, 1918. Present: Inspector Thomas J. Tunney and Sergeant John C. Dillon.

"Q. What is your full name? A. Hyman Lachowsky.

"Q. How old are you? A. Twenty-four or twenty-five.

"Q. Where were you born? A. Minsk, Russia.

"Q. How long in the United States? A. About ten years, maybe more.

"Q. Are you married? A. No.

"Q. Where do you live? A. 167 Monroe Street.

"Q. Who do you live with? A. Mother.

"Q. What business are you in? A. Bookbinder.

"Q. Where? A. 12 Elm Street.

"Q. What firm? A. Weiss & Robinson.

"Q. How long have you been an anarchist? A. I was first a Socialist and then an anarchist. I was a Socialist, and then I seen that things was not what I thought, and then I became an anarchist.

"Q. How long have you been an anarchist? A. Five years.

"Q. I will show you this (showing the circular head, 'The Hypocrisy of the United States and Her Allies'). Do you honestly believe everything in that writing to be true? A. Yes.

"Q. Do you think you were doing right by distributing these, according to the dictates of your conscience? A. Yes.

"Q. Were you influenced by anybody in distributing these? A. No.

"Q. Did you print them? A. No.

"Q. Do you know who did print them? A. No.

"Q. Did you write the manuscripts? A. No.

"Q. Did you help write or dictate the manuscript? A. No.

"Q. When was the first time that you saw this pamphlet? A. Yesterday.

"(Hymie Rosansky is brought in and interrogated as follows by Inspector Tunney at 12.12 A. M.:)

"Q. Do you know this man, Mr. Rosansky (indicating Lachowsky)? A. Yes.

"Q. What's his name? A. Lachowsky.

"Q. How long do you know him? A. A couple of weeks.

"Q. When was the first time they spoke about the printing of these anarchistic pamphlets, roasting the President? A. I do not know.

"Q. When was the first time he gave them to you to distribute? A. Last night.

"Q. Where? A. On the street.

"Q. How many altogether? A. About fifty.

"Q. And you did distribute them by throwing them out of the window this morning? A. Yes.

"Q. You threw them out the window? He told you? A. No; they all told me.

"Q. That's all just now, for the present.

"(Rosansky is brought out.)

"Q. (By Inspector Tunney to Lachowsky) Do you know that man? A. Yes.

"Q. How long do you know him? Did he tell the truth? A. Yes.

"Q. When did you first meet that man? A. At some meetings.

"Q. Anarchistic meetings at Forward Hall? A. Anarchistic meetings.

"Q. Do you know who printed these articles and dictated the manuscripts on them? A. I won't answer.

"Q. Do you know them? A. I refuse to answer.

"Q. Do you know who printed or dictated them? A. I refuse to answer.

"Q. Why? Will you say you know, but refuse to tell me the names and give me the reason why? A. No.

"Q. Is this your paper, the *New York Tribune,* dated August 23, 1918? A. Yes.

"Q. The article appears here on the front page, marked 'Wilson attacked in circulars from roofs on the East Side.' Did you show that to this man in there before you were apprehended? A. Yes.

"(Paper marked No. 5, J. C. D.)

"Q. What did you say to him at the time? What was the conversation? A. I didn't say anything.

"Q. Are you a revolutionist? A. Yes.

"Q. Do you think you could overthrow the Government of this country? Do you think there are enough radicals to overthrow the Government of this country? A. No.

"Q. Do you think these circulars would create more radicals? A. I think so. Not more radicals, but just to protest against the actions of those at Washington, against the actions of this Government and all the Allies to Russia. This Government is included.

"Q. How many packages of these did you give out to distribute altogether? A. These are the only two I had.

"Q. This package and the one you gave the fellow last night to distribute (indicating 'Hypocrisy' circular, which is marked 'No. 6, J. C. D.,' and the cir-

cular in Yiddish, which is marked 'No. 7, J. C. D.')? A. Yes."

By the Court.

Q. He made all of those answers freely and voluntarily, with no threat or promise made to him, to induce him to answer? A. No threat or promise whatsoever.

By Mr. Ryan.

Q. I show you Government's Exhibit No. 7, and I ask you if that is a paper that was before the defendant Lachowsky when he was questioned by Inspector Tunney, at the time of his examination (handing same to witness)? A. That is the paper.

Q. And that article, how is it headed there? A. "Wilson Attacked in Circulars from Roofs of East Side."

Q. That is the article referred to in the examination? A. Yes.

By the Court.

Q. Identified by you here? A. Yes.

Q. And by him there? A. Yes.

Q. How is it identified? A. The article is identified by me, by means of drawing a circle around it and marking it "No. 5, J. C. D."

By Mr. Ryan.

Q. I show you Government's Exhibit No. 6. Was that package before the defendant Lachowsky and Inspector Tunney at the time of this examination? A. It was.

Q. How do you identify that package? A. By the mark on it there, "No. 7, J. C. D."

Q. I show you this package of leaflets, in English, headed "The Hypocrisy of the United States and Her Allies." Was that before Inspector Tunney and the defendant Lachowsky at the time of this examination? A. (Examining same) It was.

Q. How do you identify that pamphlet? A. By "No. 6, J. C. D."

EDWARD J. CADDELL, a witness recalled on behalf of the Government, having been previously sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant, you are a sergeant of the United States Army connected with the Corps of Intelligence Police in New York City? A. I am.

Q. You are a stenographer? A. Yes, sir.

Q. Do you recollect the night of August 23, 1918, and the early morning of August 24, 1918? A. I do.

Q. Do you know these defendants charged in this indictment? A. I do; yes, sir.

Q. Were you present at Police Headquarters when these defendants were examined on the night of August 23, 1918, and the morning of August 24, 1918? A. I was.

Q. Did you act as stenographer at that examination? A. I did.

Q. And truly transcribed the questions and answers put to and given by the defendants? A. I did.

Q. Have you your original notes? A. I have.

Q. Of these examinations? A. I have.

Q. Will you read to the jury your notes? A. (Reading) "The following statement was made in

Room 214, 240 Centre Street, August 24, 1918, at 12.50 P. M., by Samuel Lipman:

"Q. What is your name? A. Samuel Lipman.

"Q. Where do you live? A. 290 Brook Avenue, Bronx, New York.

"Q. How old are you? A. Twenty-one years old.

"Q. Where were you born? A. I was born in Russia.

"Q. When did you come to the United States? A. I came to the United States in 1913.

"Q. Where are you employed? A. I am employed by Greenfield & Lubin, of 49 East 21st Street.

"Q. Have you declared your intention of becoming an American citizen? A. No, I have not declared my intention of becoming an American citizen, because I intend to return to Russia.

"Q. Did you register? A. I intended to go back to Russia and join the Red Guard, and, therefore, I did not register.

"Q. Did you participate in the organization of the Red Guard? A. Yes, in May, 1918.

"Q. How long do you know this man, indicating Hyman Rosansky, who was brought into the room where Lipman was being questioned? A. I know him for a few months.

"Q. Where did you first meet him? A. I met him at Madison Avenue, in Harlem.

"Q. How long do you know these anarchists who have been brought here to-night, Abrams, Schwartz, Mollie Steimer, Lachowsky and Hyman Rosansky? A. I know them for several months.

"Q. How well do you know them? A. Well, they are my friends, and I know that they are anarchists, and I exchange views with them.

"Q. Where did you discuss anarchy with them, and where did you attend meetings? A. I only attended one meeting, in Abrams' flat.

"Q. Do you approve of the sentiment expressed in the circulars which were being distributed tonight, in which the President of the United States is abused? A. Yes, I do approve of it.

"Q. Are you opposed to the draft? A. Yes.

"Q. Why? A. Well, I am opposed to all forms of war, because from my reading of history I know that they are never fought for the purposes which the governments claim they are being fought.

"Q. I show you a sheet of yellow paper upon which there is certain writing, and the heading of which reads, 'Revolutionists! Unite for Action!' and ask you if you know anything about it? A. I know all about it, because I wrote the article.

"Q. Will you read to the stenographer what you have written on this sheet of paper? A. Yes. (Witness reads the following:)"

(Government's Exhibit 11 read.)

"Q. When you speak of the 'Action of our Kaiser,' whom do you refer to? A. President Wilson.

"Q. When you wrote 'Socialists, Anarchists, Industrial Workers of the World, Socialist Labor Party men, and other revolutionary organizations, unite for action and let us save the workers' republic of Russia,' what do you mean? A. I meant that we should start protest meetings all over the country and keep the soldiers busy preventing them and stopping them after they had started.

"Q. What do you mean by calling the President a 'Kaiser'? A. Well, Congress is representative of the people and the President didn't ask Congress if he could send troops to Russia; he did it on his own account, and that is the action of a kaiser.

"Q. I notice in reading this printed pamphlet (examiner refers to one of a number of pamphlets

which had been confiscated) that the words 'Kaiser of America' appears, and you also refer to the words 'Our Kaiser' in your article which you have just admitted writing. Do you agree with the sentiment expressed in that pamphlet in general? A. Yes.

"Q. Did you distribute any of these pamphlets? A. No, but I know they were going to be distributed.

"Q. Who told you that? A. My friends, whom I met on the street.

"Q. Now, I wish you would be a little more specific about that expression, 'the American Kaiser.' Who did you refer to? A. I meant President Wilson."

By Mr. Ryan.

Q. I show you Government's Exhibit No. 14, and I ask you if that is a copy of the pamphlet referred to as confiscated pamphlets in this examination? A. Yes, sir; that is a copy of it.

Q. Who was the next defendant examined? A. Jacob Abrams.

Q. Will you tell the jury the questions put to the defendant Abrams by Inspector Tunney and his answers thereto? A. (Reading) "Statement of Jacob Abrams, made in Room 214, 240 Centre Street, August 23rd, 1918, at 12.50 P. M.:

"Q. What is your name? A. Jacob Abrams.

"Q. Where do you live? A. 5 East 104th Street.

"Q. Where were you born? A. In Russia.

"Q. How long are you in the United States? A. Eight years.

"Q. What do you work at? A. I am employed as a bookbinder.

"Q. Who do you work for? A. I work for the Victor Press, 23 Worth Street.

"Q. When did you become an anarchist? A. I became an anarchist four years ago.

"Q. Why did you become an anarchist? A. I came from Russia as a Social Democrat. While in Russia I served a term in prison. When I came to the United States I did not immediately become an anarchist, but I studied, and finally, after I was in the country four years, I found that the conditions here were no better, and I, therefore, became an anarchist.

"Q. Do you know Emma Goldman and Alexander Berkman? A. Yes, I testified at their trial.

"Q. What did you testify to at the Emma Goldman and Alexander Berkman trial? A. The question was asked me whether I had heard either Emma Goldman or Alexander Berkman say, 'We believe in violence and we will use violence,' and I answered that I never heard them say that.

"Q. When did you hear from Emma Goldman or Alexander Berkman last? A. About four months ago, through *Mother Earth*. She sent a message that she was trying to make as many things as the Government required her to make in the shop.

"Q. Do you know anybody who has heard directly from Alexander Berkman? A. Yes; Miss Fitzgerald told me that she had heard recently from Berkman and that he was all right.

"Q. I show you a proof of a circular written in Yiddish, and ask you if you know anything about it? A. Yes, I wrote the article.

"Q. What is the nature of the article? A. It is based on some statements that were made by an English nurse who had been on the battle front and describes the horrors that are seen on the other side.

"Q. I show you a registration card on which the name Jacob Abrams appears. A. Yes, that is mine.

"Q. I show you a classification card, marked Division No. 14——"

By Mr. Ryan.

Q. Just a moment. Will you glance through your notes and see that the next three questions referred to a certain card? A. Yes, sir.

Q. And the next question? A. Yes.

(Witness continues reading:)

"Q. Now, getting back to the matter of these revolutionary pamphlets, when was it first discussed to print these revolutionary pamphlets, to prevent the United States sending an army into Russia to lick the Germans? A. That was discussed about two weeks ago.

"Q. [illegible]here? A. At 5 East 104th Street.

"Q. [illegible]n't it an actual fact that Emma Goldman is conducting this whole revolutionary propaganda? A. I do not know.

"Q. Have you any interest at all in the United States Government? A. I have none whatever.

"Q. You saw all these Russians in this room tonight. Now, who invited them to discuss [illegible]s subject up in your house? A. I did, because I pay the rent for the apartment.

"Q. What did you discuss? A. We discussed the social revolution.

"Q. Do you believe in this Government of ours? A. No, indeed I don't.

"Q. How much money was collected altogether for printing and distribution of these disloyal and revolutionary pamphlets? A. I really don't know how much; there was some money collected, but I don't know how much.

"Q. How many of you were together when you were discussing this revolutionary pamphlet? A. About five or six.

"Q. Won't you please tell me where the press is that printed these circulars? A. I really don't know where it is. Some of the other fellows can tell you, if they want to."

By Mr. Ryan.

Q. The next defendant? A. The next statement was taken of Mollie Steimer.

Q. Will you please read the examination of Mollie Steimer, and give the date and the hour, please? A. (Reading) "The following statement was made in Room 214, 240 Centre Street, by Mollie Stimer, August 24, 1918, at 2.15 A. M.:

"Q. What is your name? A. Mollie Stimer.

"Q. Where do you live? A. 67 East 97th Street, and I have a room in 5 East 104th Street.

"Q. How much do you pay for that room? A. $6 a month.

"Q. What do you work at? A. I am an operator on waists and white goods.

"Q. Is your father and mother alive? A. Yes, they live in New Jersey, 628 East Park Street, Elizabethport, New Jersey.

"Q. Where were you born? A. I was born in Russia.

"Q. How long are you in the United States? A. I came here in 1913, the 12th of March.

"Q. When did you become an anarchist? A. I have always been an anarchist.

"Q. When did you see these circulars for the first time? A. I distributed these circulars at Rivington and Clinton Streets, and I also distributed some from the Educational Alliance, on East Broadway.

"Q. Did you hand them out or did you throw them down? A. I threw them down.

"Q. About how many at a time did you drop? A. About a hundred.

"Q. Did you read them? A. Of course, I did.

"Q. Do you believe that the contents of these circulars are right? A. Yes.

"Q. Did you have anything to do with the dictating of the manuscript? A. I am in sympathy with every word in that circular.

"Q. Did you dictate it? A. No.

"Q. Do you know who did dictate it? A. No.

"Q. Did you contribute to the expense of printing it? A. Yes.

"Q. Well, how much did you contribute? A. I am a working girl, and, therefore, I couldn't contribute very much.

"Q. Didn't you know at the time you distributed these pamphlets that it was a violation of the law? A. Yes, sir.

"Q. How did you know it was a violation of the law? A. Well, I read in the newspapers that the Espionage Law had passed, and it said that anyone who attacked the United States or who speaks against the uniform of the United States Army or Navy insults the President, and a lot of other things. And it said if you did any of these things you would get twenty years in prison.

"Q. Do you make that statement in a spirit of braggadocia? A. No, I make it because I feel it."

By Mr. Ryan.

Q. Sergeant, I show you Government's Exhibit No. 14, and ask you if that is a copy of the leaflet that has been referred to in this examination (handing same to witness)? A. This is a copy.

Q. At that time examined? A. This is a copy of it.

Q. I show you Government's Exhibit No. 9, a copy of the pamphlet in Yiddish. Was the copy of that pamphlet before the defendants at the time of the examination of these defendants? A. Yes, sir; a copy.

Mr. Ryan: I would like to recall Sergeant Dillon for one question only.

JOHN C. DILLON, a witness recalled on behalf of the Government, having been previously sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant, I show you Government's Exhibit No. 9, a copy of the pamphlet printed in Yiddish, and I ask you if copies of that pamphlet were before the defendants Lachowsky and Rosansky at the time of their examination? A. They were.

THOMAS J. TUNNEY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Inspector, you are an inspector in the Police Department of the City of New York? A. I am.

Q. You know all these defendants charged in this indictment? A. I do.

Q. You recollect the night of August 23, 1918, and the morning of August 24, 1918? A. I do.

Q. Did you conduct an examination at Police Headquarters of these defendants? A. I did.

Q. Do you recollect the examination of defendant Abrams? A. I do.

Q. Do you recollect the questions put by you to defendant Abrams, as follows: "Q. You saw all these Russians in this room to-night. Now, who invited them to discuss this subject up in your house?" A. I do.

Q. You recollect the answer given by the defendant Abrams to that question, as follows: "A. I did, because I pay rent for the apartment"? A. I do.

Q. When that question was put to the defendant Abrams, who of the defendants were present in the room? A. They were sitting in the next room, with the door open, all except the defendant Rosansky.

Q. When you said to the defendant Abrams, "You saw all these Russians in this room to-night. Now, who invited them to discuss this subject up in your house," you referred to the defendants, with the exception of defendant Rosansky, who was not present? A. Yes; he was sitting in the next room, to the left of the defendant Abrams.

Q. All the other defendants were in plain view of the defendant Abrams? A. Yes; in another room, directly in the rear.

Q. And they were within hearing of the questions? A. No, I don't know that all the other defendants did hear that.

By the Court.

Q. You said that all these witnesses' examination was made freely and voluntarily, didn't you? A. They were.

Q. And there were no threats or any force used on them or towards them? A. None whatsoever.

Q. And no promises? A. No promise did I make them on that examination.

HENRY L. BARTH, a witness recalled on behalf of the Government, having been previously sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant, after these defendants were examined at Police Headquarters, what then did you do? A. Amongst the effects of Abrams I found a bill of sale for some printing materials that had been sold to him by a man by the name of Alexander Bursch, of 47 Beekman Street, where we went and learned that he had sold to Abrams a whole printing establishment and had delivered it into the basement at 1582 Madison Avenue, where we went, Detective Jenkins, or Sergeant Jenkins and Sergeant Caddell, and found the place locked. We then 'phoned to our office, and they then communicated with Mr. Ryan, who in turn had a search warrant issued, which was brought up there by Sergeant Ford and Marshal Miller. Upon entering the place, we found that the side door of this particular establishment, this printing establishment, in the basement had been broken open, and that plates and types were thrown on the chairs. We also found pamphlets that were misprinted; we found scraps of pamphlets that had been torn, and corrections made on them; we found blank papers which was the same as the paper used in the printing of these pamphlets.

Q. Just a minute, Sergeant. You say you found pamphlets; you mean copies of the pamphlet here put in evidence? A. Yes, sir. In Yiddish. They had been misprinted, crumpled up and laying on the floor, and we found a pail in the center of the floor containing numbers of pamphlets that had been set on fire and put out. We also found trays of type.

Q. Go on, Sergeant, say what you did and what you saw. A. Well, after taking the pail and the pamphlets and the blank paper, we secured the door, and we left, leaving a policeman in charge.

Q. Did you see a printing press in that establishment? A. There were two printing presses in the establishment, a hand press and a power press.

Q. A power press? A. Yes.

Q. You remember that you brought with you several trays of type and plates—these plates, and this bucket containing these printed pamphlets, and the other pamphlets that you found, and the packages of blank paper, down to the Marshal's office? A. We did.

Mr. Ryan: I want to offer in evidence, through this witness, several of these articles, and then I will have finished with him.

Q. Sergeant, I show you an envelope containing certain scraps of paper, and I ask you when you saw those scraps of paper first (handing same to witness)? A. These scraps of paper were lying on a box near the small press, that were in the printing shop, and there was a copy of the circular in English, and translations and corrections had been made on these scraps.

Mr. Ryan: I offer this envelope containing these scraps of paper in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 15.)

Q. I show you, Sergeant, this circular or leaflet in Yiddish, and I ask you where you first saw that (handing paper to witness)? A. That was crumpled

up, lying on the floor alongside of the box where the small press was. It is a misprint of the Yiddish.

By the Court.

Q. How is it that you identify it? A. By my initials on the paper.

Q. What are they? Read what it says. A. "Found on the box on which small press is standing in rear of basement at 5 P. M., August 26, 1918, by Sergeants Barth and Jenkins," and that is signed in my handwriting.

Mr. Ryan: I offer it in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 16.)

By Mr. Ryan.

Q. I show you a leaflet printed in Yiddish, and ask you when that was first found? A. That was crumpled up, on the electric motor in the printing shop, shown to me by Sergeant Jenkins, lying there, and both of us here signed our initials on the back for identification.

Q. What are those initials? A. H. B. and T. J.

Mr. Ryan: I offer it in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 17.)

Q. I show you these two papers, and I ask you where you first saw these papers? A. In amongst the effects of Abrams, in our office, on the night of August 23rd.

Mr. Ryan: I offer it in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 18.)

Q. I show you this pail containing burned paper, and I ask you when you first saw that pail and contents? A. Standing in the center of the floor, in the basement of 1582 Madison Avenue.

Q. Is that the pail containing the paper that you referred to in your testimony just given? A. It is.

Mr. Ryan: I offer this pail and contents in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 19.)

Q. Sergeant, I show you these four time cards, and I ask you where you first saw them and where you got them (handing cards to witness)? A. They were given to me by the superintendent of the American Hat Company on the 23rd of August, the date we arrested Rosansky.

Q. These are the time cards that you referred to in your testimony the other day? A. They are.

Mr. Ryan: I offer them in evidence as one exhibit.

Mr. Weinberger: No objection.

(Four cards received in evidence and marked Government's Exhibit No. 20.)

Q. Sergeant Barth, I show you a package of blank paper, and I ask you where you first saw that package? A. Lying on a shelf in the basement of 1582 Madison Avenue.

Q. That is the printing shop you have been referring to? A. It is.

Q. Sergeant, was Sergeant Jenkins with you continuously during the time that you were searching these premises at 1582 Madison Avenue? A. He was.

Mr. Ryan: I offer package in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 21.)

Q. I show you fifteen trays of type, and ask you where you first saw that type? A. In the printing shop at 1582 Madison Avenue.

Q. When did you see it? A. On the afternoon of August 26th.

Q. And you, in company with whom? A. Marshal Miller, Sergeant Jenkins and Sergeant Caddell.

Q. That type was brought by you men to the Marshal's office? A. It was.

Mr. Ryan: I offer those fifteen trays of type in evidence.

Mr. Weinberger: No objection.

(The trays of type are known as Government's Exhibit No. 22, and not marked.)

Q. Sergeant, I show you three photographs, and I ask you of what place those are photographs? A. They are photographs of the printing shop in the basement of 1582 Madison Avenue.

(Photographs marked Government's Exhibits Nos. 23, 24 and 25 for Identification.)

JAMES A. MCBRIDE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Mr. McBride, what is your occupation? A. Photographer.

Q. Do you remember going to the premises 1582 Madison Avenue on August 26, 1918, with Sergeant Barth and others, to take certain photographs? A. I do; but I don't know whether it was the 26th or the 27th.

Q. I am mistaken on the date. I believe it was on the 27th. I show you Government's Exhibits for Identification Nos. 23, 24 and 25; did you take a photograph of the shop at 1582 Madison Avenue? A. I did.

Q. Did you take photographs of the exterior and interior? A. I did.

Q. Look at these exhibits that I have just shown you, and I ask you if those are the photographs that you took on that date? A. They are.

Q. Do those photographs represent the condition of the exterior and the interior of the shop at 1582 Madison Avenue on August 27, 1918? A. They do.

Mr. Ryan: I offer them in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibits Nos. 23, 24 and 25.)

HENRY L. BARTH, a witness recalled on behalf of the Government, having been previously sworn, testified as follows:

Direct examination (continued) by Mr. Ryan.

Q. I show you Government's Exhibit No. 25, being a photograph of the interior of the shop at 1582 Madison Avenue, and I ask you if you can designate on that picture where you found Government's Exhibit No. 15? A. On this box here, with that small press, where that is standing (indicating).

Q. Mark that, please. A. (Witness does so.)

Q. I show you Government's Exhibit No. 17, and I ask you to designate on that photograph where you found that exhibit? A. That was found on the electric motor that is installed right about there (indicating).

The Court: If it is important, these designations, better let the jury see where he designates them. You might go down before the jury and point it out to the jury, if that is important.

(Witness goes down before the jury and exhibits photograph to the jury.)

By Mr. Miller.

Q. Mark that No. 1 and 2 and 3, consecutively. A. Yes. The jury can see here that there is a box, where this small press is standing (indicating), and these scraps of paper were lying right along there (indicating), and these pamphlets, these misprinted pamphlets, were lying on the electric motor (indicating).

Q. Mark that "1." A. (Witness marks) This other paper was lying all crumpled up in the corner, right alongside of that box (indicating).

Q. The witness is now referring to Exhibit No. 16. Mark that No. 3. Where would that come, exactly? A. Right there (indicating).

Q. Mark that spot No. 3. A. (Witness marks.)

Q. If you will let all the jurymen see that. A. (Witness does so.)

By Mr. Ryan.

Q. Sergeant, will you also mark on there where you found the pail and its contents? A. Standing right in the center of the floor, there (indicating).

Mr. Miller: Mark that 4.

(The witness marks.)

Q. Where did you find the blank pieces of paper? A. On that shelf (indicating).

Q. Mark that No. 5. A. (Witness marks.)

Q. By "blank pieces of paper," I mean Government's Exhibit No. 21. Did you find any copies of the English leaflet, in whole or in part, in that shop? A. We found part of the English pamphlets printed, in that pail.

Q. And the scraps of paper marked in evidence? A. The scraps of paper on which corrections had been made.

Q. Where did you find the trays of type that have been put in evidence? Designate on this photograph, please. A. Here are the trays of type there (indicating). It is not shown on this photograph.

Q. On either side? A. On both sides.

Q. Of the printing press? A. Yes.

Mr. Weinberger: No questions.

THOMAS F. JENKINS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Miller.

Q. Sergeant Jenkins, were you present when the bill found on the defendant Abrams was found? A. In his effects?

Q. In the Police Headquarters. A. I was.

Q. That is Government's Exhibit No. 18. Were you present when that was found? A. I was.

Q. Now, state what you did on the afternoon or the morning of August 26th, 1918. A. In the morning we went to 47 Beekman Street—that is the man who sold Abrams the press, and some type. I asked him if he had made such a sale, and he says yes, and that his brother had set the press up in the shop at 1582 Madison Avenue. We went to 1582 Madison Avenue, and the place was locked. I went upstairs in the building, and I asked the janitress who owned the place, who rented the basement downstairs, the print shop.

Q. Just tell us what you did. A. Sergeants Barth, Caddell and myself, with Marshal Miller, entered the printing shop in the basement of 1582 Madison Avenue, and the first thing I noticed was a big press, a motor-driven press, and the back door in this shop had been busted open. I also saw some type there, and there was a small hand press. In the shop we found the pail with torn pieces of these pamphlets, "The Hypocrisy of the United States and Her Allies," both in English and Yiddish. These pamphlets had been set on fire, and they did not burn through. We also found blank paper.

Q. Isn't it a fact that this Government's Exhibit No. 21 is the paper which you found there? A. That is the paper.

Q. What else did you find? A. We found some copies of these pamphlets.

Q. Did you find there Government's Exhibit No. 15 (handing same to witness)? A. Those papers were found there.

Q. While you were present? A. While I was present.

Q. Did you also see there Government's Exhibits Nos. 16 and 17 (handing papers to witness)? A. I did. They are misprint pamphlets.

Q. Did you also see there Government's Exhibit No. 18? A. I did.

Q. Also Government's Exhibit No. 19? A. I did.

Q. Did you hear Sergeant Barth's description as to where these various exhibits were found, referring to the picture Government's Exhibit No. 25 (handing same to the witness)? A. I know where they were found.

Q. Did you hear Sergeant Barth testify as to where they were? A. I did.

Q. Is that a correct statement as to where they were found? A. That is a correct statement, yes.

Q. That was on August 26, 1918, was it? A. It was.

Mr. Weinberger: No questions.

EVA KRAUS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Miller.

Q. Mrs. Kraus, are you the janitress of 1582 Madison Avenue? A. Yes, sir.

Q. Were you the janitress there during the months of July and August, 1918? A. Yes, sir.

Q. While such janitress, did you rent the basement store to anybody? A. Yes, I rented it to the printing man, the man that sits here (indicating).

Q. This gentleman (indicating)? A. Yes, sir.

Q. That is, defendant Abrams? A. Yes, yes, yes, that is the man.

Q. About what date did you rent the basement store to him? A. I rent it to him for $8, and he told me he had a printing store.

Q. He told you what? A. He told me he was going to open a printing store, and I ask if he is a printer, and he said no, but printing work he was going to do at nighttime more than in the daytime; that is all what I have to say.

Q. When did you rent it to him? A. I told you I didn't know what for time I rented him; I have it on a paper somewhere that I gave you.

Q. Was it July, the first month? A. I think so.

Q. For which he paid rent? A. He have to pay from the 15th.

Q. And he also rented the store during the month of August? A. Yes, he had it a couple of months before the 15th.

Q. Did you see him working there at any time? A. I heard them; I didn't see them, I heard them. I saw them working, staying in the store, and him and another one there.

Q. What was he doing? A. Well, he was working on his own business, on printing.

Q. Was he working on the printing press? A. Yes, on the machinery.

Q. Who was working with him? A. His brother—he told me he was his brother.

Q. Is he here in court with him? A. Yes, with the glasses.

Q. Which defendant is that—this man (indicating)? A. Yes.

Q. Defendant Lachowsky? A. Yes.

Q. You say you saw him working in the shop? A. Yes.

Q. On the printing press? A. I didn't see them at that time; I have not any time—I saw them a couple of times; I saw them in there in the nighttime a couple of times, not the daytime. That is all what I seen.

ALEXANDER BURSCH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Mr. Bursch, what is your business? A. Printing machinery and supplies.

Q. Where do you carry on that business? A. 47 Beekman Street.

Q. Do you know the defendant Abrams? A. I do, yes.

Q. When did you first meet him? A. I met him about two years ago.

Q. When next did you see him? A. In the month of July, 1918.

Q. About what time? A. The day was around the 15th—the 14th or 15th.

Q. On that day what did he say to you and what did you say to him? A. He came in to my printing machinery place, to buy a printing outfit.

Q. What did he say he wanted a printing outfit for? A. To print, of course. I didn't ask him and he didn't say what he wished to do with it.

Q. When did you next see him? A. In the month of August, the 14th.

Q. Did he buy a printing outfit from you? A. Yes, sir.

Q. When? A. In the month of July.

Q. About what day? A. Around the 15th.

Q. Where did he say that that outfit should be delivered? A. To 1582 Madison Avenue.

Q. Did you go to 1582 Madison Avenue with the printing outfit? A. Yes, sir; we delivered—my brother and myself.

Q. What did that printing outfit consist of? A. One machine, motor and type.

Q. You say one machine, motor—do you mean a printing press? A. Yes, sir.

Q. How much type? A. About twelve or fifteen cases.

Q. I show you Government's Exhibit No. 25, and I ask you if that is a photograph of the press you sold the defendant Abrams? A. Yes.

Q. Did the defendant Abrams pay you for this press? A. Part in cash, and he promised to pay the balance in twelve months' time.

Q. Only part of it in cash? A. Yes, and a chattel mortgage and notes for the balance.

Q. Have you a copy of the chattel mortgage with you? A. I have the original; the copy is on file.

Q. The paper you produce is the original chattel mortgage? A. Yes, sir.

Q. Made by the defendant Jacob Abrams, to whom you sold the printing outfit? A. Exactly.

Mr. Ryan: I offer this paper in evidence.
Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibit No. 26.)

Q. I show you two bills headed "Bursch Brothers," Government's Exhibit No. 18 (handing papers to witness), and I ask you did you render those bills to the defendant Jacob Abrams for goods purchased of your firm? A. Yes, sir.

Q. And those goods were purchased of your firm? A. Yes, sir.

JULIAN E. INGLE, JR., a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Mr. Ingle, what is your business? A. Printer.

Q. What is the name of your firm or corporation? A. Ingle, Incorporated.

Q. How long have you been in the printing business? A. Since 1903.

Q. Do you know the different kinds of type used for printing purposes? A. Generally; yes, sir.

Q. I show you this book entitled "American Specimen Book of Type Styles." That is the book you typemen use in buying and selling type, is it not? A. It is a print of a book; yes, sir.

Q. I show you Government's Exhibit No. 1 (handing same to witness) and I ask you in what kind of

type the word "Hypocrisy" is printed in? A. It is a large size of Gothic type. I should say it is what is known as "Copper Plate Gothic Bold."

Q. I show you a piece of type with the letter "H," and I ask you if that is the same style of type that the letter "H" in "Hypocrisy" is printed in on Exhibit No. 1? A. I would have to test it, to make sure it is; it is rather hard for me to do it with the eyes. (Examining same.) Yes, sir; it is exactly the same style.

Q. The same style and the same size? A. Yes, sir.

Q. I call your attention to the words "United States" on Government's Exhibit No. 1, and I ask you what is the name of the type in which that is printed (handing same to witness)? A. That is the same type, but a different size.

Q. I show you a piece of type with the letter "E," and I ask you if upon that piece of type the letter "E" in "United States" could have been printed on Government's Exhibit No. 1? A. It could; yes, sir.

Q. That is the same size and the same style of type? A. Yes, sir.

Q. I ask you to look at the words on the same exhibit, "And Her Allies," and I show you a piece of type on which is the letter "E," and I ask you if that "E" in "Allies" is printed with type of the same size and the same style (handing same to witness)? A. It is.

Q. What do you call that particular kind of type? A. Copper Plate Gothic Bold.

Q. I ask you to look at the printing, other than the particular words that I have called your attention to, and I ask you in what style of type it is printed, the body of the exhibit? A. The body of the exhibit is printed in Cheltenham Bold, 10-point, I should say.

Q. I show you a piece of type on which is the letter "M," and I ask you if that piece of type is Cheltenham Bold, 10-point, of the same style and the same size as the body of Government's Exhibit No. 1? A. It is.

Mr. Ryan: I ask that the separate pieces of type be marked for identification, and I will prove where they come from.

(The letter "H" was marked Government's Exhibit No. 27 for Identification.)

(The letter "E" was marked Government's Exhibit No. 28 for Identification.)

(The letter "e" was marked Government's Exhibit No. 29 for Identification.)

(The letter "M" was marked Government's Exhibit No. 30 for Identification.)

HENRY L. BARTH, a witness recalled on behalf of the Government, having been previously sworn, testified as follows:

Direct examination by Mr. Ryan.

Q. Sergeant, I hand you Government's Exhibits for Identification Nos. 27, 28, 29 and 30, and I ask you where those exhibits came from? A. These are different sizes of type that Sergeant Jenkins and myself took out of those trays that you see over there, which were taken from the printing shop at 1582 Madison Avenue.

Mr. Ryan: I offer these four exhibits, marked for identification, in evidence.

Mr. Weinberger: No objection.

(Received in evidence and marked Government's Exhibits Nos. 27, 28, 29 and 30.)

Q. When you pointed to the trays, you mean Government's Exhibit No. 22? A. I do.

Mr. Weinberger: The stipulation is made that the translation attached to the indictment is the correct translation of the Yiddish pamphlet, Government's Exhibit No. 2.

Mr. Miller: Gentlemen, I will read you, now, the first pamphlet, which is the one entitled "The Hypocrisy of the United States and Her Allies."

(Mr. Miller read Government's Exhibit No. 1 to the jury.)

Mr. Miller: Now, I am going to read you Government's Exhibit No. 2, which is entitled "Workers, Wake Up."

(Mr. Miller read Government's Exhibit No. 2 to the jury.)

Mr. Miller: The next exhibit I am going to read you is Government's Exhibit No. 7; that is the article testified to that Lachowsky showed to Rosansky on the corner of 104th Street and Madison Avenue on August 23, 1918.

(Mr. Miller read Government's Exhibit No. 7 to the jury.)

Mr. Miller: Here are Government's Exhibits Nos. 1 and 2, the circulars found, according to the testimony, on the defendant Rosansky.

(Papers handed to the jury.)

Juror No. 3: Is that Jewish copy of the translation in English?

Mr. Miller: I read you the translation of it just now in English.

These are Government's Exhibits Nos. 3 and 4, which are circulars found in Rosan-

sky's apartment, with the writings and the signatures and marks on the back, as testified to (handing same to jury).

This is a package of circulars, Government's Exhibit No. 5, found on Rosansky in the station house (handing same to jury).

This is Government's Exhibit No. 6; this is a package of circulars, as testified, that had been found on Lachowsky, some in English and one in Yiddish (handing same to jury).

This is Government's Exhibit No. 8, a package of papers found on Mollie Steimer, according to the testimony, in English and Jewish, about half and half (handing same to jury).

These are the Yiddish pamphlets brought by the boys to the police station, according to the testimony (handing same to jury).

These were found in the apartment, according to the testimony, of Abrams, with the pamphlets inside, quite a number, I should say, in English and Yiddish (handing same to jury).

Here is Government's Exhibit No. 11, which is a writing found on defendant Lipman at Headquarters, and I shall now read you Government's Exhibit No. 11. This is the exhibit that was found on the defendant Lipman at Headquarters, entitled "Revolutionists, United for Action."

(Mr. Miller read Government's Exhibit No. 11 to the jury.)

Mr. Miller: Government's Exhibit No. 12 is a pamphlet, Yiddish and English, found at 5 East 104th Street, in this apartment, on the mattress (handing same to jury).

Government's Exhibit No. 13 are papers, typewritten papers, found in the room, that has been testified to, occupied by Abrams in that apartment.

(Mr. Miller read Government's Exhibit No. 13 to the jury.)

Mr. Miller: Government's Exhibit No. 14 is a pamphlet found by Mr. Groshans, and brought in to the police sergeants (handing same to jury).

These you can look at as you pass them along.

Here is Government's Exhibit No. 15, and they are the scraps of paper found in 1582 Madison Avenue by Sergeant Barth, and there is one corrected pamphlet in there in pencil.

Government's Exhibits Nos. 16 and 17 are the misprinted pamphlets, which are printed slantwise across the paper. You will notice, in one of these, the "Russian Revolution" is in large letters, and corrected to small letters in this pamphlet (handing same to jury).

Government's Exhibit No. 18 is the bill to Jacob Abrams from Bursch Brothers, which Mr. Bursch testified here that he sold certain stuff, and this is the bill for it (handing same to jury).

The pail and contents I am not going to pass around. It is down here, if you gentlemen want to see it, but I don't want to pass it around if I can help it. Government's Exhibit No. 19.

The time cards are Exhibit No. 20. These have been stamped and identified as the time

of one of the defendants, Rosansky, when he came to work. The time is shown in the last column (handing same to jury).

Exhibit No. 21 is the blank paper found, which you may compare with a complete copy of the pamphlets (handing same to jury).

The trays of type are over here, and I suppose you don't care to see them.

The Court: During the course of the argument the jury can look over that pile of printer's necessaries called type. Counsel called it by some other name, but it is a printer's case. He called it a tray, but it is a printer's case. That is what they are. Anybody who has been about a printing office knows what a printer's case is, and that it is not a tray. If the District Attorney had had a little service in his early life, even in the office of a country newspaper, he would have known that, and known how to accurately have termed them. There is a good deal of difference between a photograph and a picture, as you will notice.

Mr. Miller: Exhibits Nos. 23, 24 and 25 are photographs of the store and press (handing same to jury).

Government's Exhibit No. 26 is the chattel mortgage of Mr. Bursch (handing same to jury).

This, of course, covers the printing press, the type, and so forth, and the cases of type.

Government's Exhibits 27, 28, 29 and 30 are samples of the type. You will find one in each package there (handing same to jury).

The Court: Have you finished in regard to your exhibits, Mr. District Attorney?

Mr. Miller: I have, but I have a witness to recall.

(Adjourned until October 18, 1918, at 10.30 A. M.)

New York, October 18, 1918.

ALEXANDER BURSCH resumed.

Direct examination by Mr. Ryan.

Q. Mr. Bursch, I show you Government's Exhibit No. 4, and I ask you what style and size of Hebrew type it is (handing same to witness)? A. 12-point.

Q. Did you sell the defendant Abrams 12-point Hebrew type during the month of July? A Yes, sir.

Q. 1918? A. Yes, sir.

Q. What kind of a press did you sell the defendant Abrams and deliver at 1582 Madison Avenue, New York City? A. Gordon press.

Q. What is the number? A. 1,006.

Q. I show you Government's Exhibit No. 3, and No. 4, the leaflets printed in English and in Hebrew, and I ask you if those leaflets could be printed on the Gordon press that you sold the defendant Abrams (handing paper to witness)? A. Yes, sir.

Mr. Ryan: The Government rests.

GOVERNMENT RESTS.

MOTIONS TO DISMISS.

Mr. Weinberger: If the Court pleases, I have certain motions before going to the jury I think which your Honor should hear. And will your Honor take judicial notice of the fact that we are at war with Germany, without legal proof?

The Court: Yes.

Mr. Weinberger: And all of the other acts in reference to Germany?

The Court: Yes.

Mr. Weinberger: And all acts of the Government—that is, the executive and the legislative?

The Court: Yes.

Mr. Weinberger: So I now need not make any motions in reference to them?

The Court: No.

Mr. Weinberger: I move to dismiss all of the indictments on my original grounds that the Espionage Act is unconstitutional, and in addition thereto it is not sufficiently definite to inform anyone as to what the actual thing is that is prohibited, and therefore it is unconstitutional. Will your Honor rule on that?

The Court: Yes. I overrule your motion and give you the exception.

Mr. Weinberger: I now move to dismiss all of the indictments on the ground that there is no proof of a conspiracy, though there may be proof of some acts against some of the defendants.

The Court: Yes, I overrule that and give you an exception.

Mr. Weinberger: I now move on behalf of each and every defendant, especially defendant Prober, that no proof of conspiracy and no proof of an overt act against any of the defendants, especially against the defendant Prober, has been proved.

The Court: Yes, I overrule that.

Mr. Weinberger: Exception.

And I now move that there is no evidence before the Court under the first count in the indictment of any disloyal or scurrilous or abusive language about the form of government of the United States, there not being one single bit of evidence about that, merely an attack upon the act of the Government and of the executive in reference to it and the Allies, in reference to Russia and against intervention.

The Court: I overrule your motion.

Mr. Weinberger: Exception.

And I move now under the second count that there is absolutely no evidence of a conspiracy, and no evidence of an overt act to utter, print, write and publish language intended to bring the form of government of the United States into contempt, scorn, contumely and disrepute.

The Court: Your motion is overruled.

Mr. Weinberger: Exception.

On the third count there is absolutely no evidence of a conspiracy to unlawfully and wilfully utter, print, write and publish language intended to incite, provoke or encourage resistance to the United States in said war with the Imperial German Government.

The Court: Overruled.

Mr. Weinberger: Exception.

The only evidence being that the defendants protested against intervention in Russia and had nothing to do with the war in Germany.

The Court: Motion overruled.

Mr. Weinberger: And I except.

On the fourth count I move to dismiss, that there is no evidence that the defendants conspired unlawfully and wilfully by utterance, writing, printing and publication to urge, incite and advocate curtailments of production of things and products, to wit, ordnance and ammunition, necessary and essential to the prosecution of the war in which the United States now is and from April 6, 1917, to the date of presentation and filing of this indictment, continuously has been engaged, to wit, said war with the Imperial German Government, with intent by such curtailment to cripple and hinder the United States in the prosecution of said war. There is absolutely no evidence in reference to that whatsoever.

The Court: I overrule the motion and give you an exception.

Mr. Weinberger: I now renew my motions made at the opening of the case to ask the Government to select upon which count in the indictment they desire to proceed.

The Court: I overrule that.

Mr. Weinberger: Exception.

And I now ask further that the four counts in the indictment, the act only being one act, that they can not try us four times under one law, and in violation of only one

law, and they cannot separate it into four definite crimes when it was only one act.

The Court: I overrule that, it is one indictment.

Mr. Weinberger: It is four counts, and I ask that they be consolidated into one count in the indictment.

The Court: It is one indictment.

Mr. Weinberger: I respectfully except.

(Mr. Weinberger opened the case to the jury on behalf of the defendants.)

RAYMOND ROBINS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Robins, where do you live? A. Chicago, Illinois.

Q. And what is your business at the present time? A. Social worker.

Q. What has been your business for the past year other than social worker? A. A member of the Mission of the American Red Cross in Russia.

Q. And where did that take you in Russia? I mean, in what part? A Rather well over the Russian republic, Petrograd, Moscow, twice across Russia, from Vladivostok and through other cities.

Q. And what was your position in the American Red Cross for the period of about four months? A. I was a major in the American Red Cross, and for the rest of the time the chief of the Mission—commissioner it is called; a deputy commissioner.

Q. And what was the date of your arrival in Russia? A. The date of the arrival in Russia was the 17th of July, I think.

Q. Of 1917? A. Of 1917.

Q. And was that before or after the Bolsheviki overthrow of the Kerensky government? A. That was before.

Mr. Miller: Your Honor, I object to that question as having nothing to do with the issue here, being immaterial and incompetent and irrelevant.

The Court: It is perfectly harmless for him to fix the time. I will rule on it if he asks the question.

Mr. Weinberger: We will connect all this witness's testimony up, just as the Government did.

The Court: I don't think the matter can be presented to the Court in a mere matter of dates, you know. I want the substantive question put; something that raises the issue before the Court. A mere matter of dates can not do that.

Q. What were your duties in the Red Cross in Petrograd and surrounding country at that time? A. Food, supplies, was my special work.

Q. And that required your going over what territory? A. Well over European Russia.

Q. Did you go into Siberia at all? A. I came through Siberia—I went through Siberia twice; through Siberia once, and then going out.

Q. In going to Russia you went through the Pacific port; is that what you mean? A. Correct.

Q. When you went over the first time? A. Correct.

Q. In going over Russia you became familiar with the conditions there, and the conditions of the people at that time? A. As fully as I was able to.

Q. That was your duty, to find out what you could do in the way of help, with the aid of the American Red Cross? A. That is correct.

Q. Did you ever represent the United States Government while in Russia? A. No; not officially, no.

Q. In what capacity did you represent the United States Government?

Mr. Miller: I object to that, your Honor, as immaterial.

The Court: That has nothing to do with this case.

Mr. Weinberger: I will connect it all up, and I believe we should have the same allowance—be allowed to do the same as the Government did when I objected to their testimony as immaterial, and when your Honor said that, on their statement that they would connect it up, you allowed it in.

The Court: I think I know what you are driving at, but we could get your proposition clearly before the Court in a concrete form; and, in view of your suggestion, I will let you ask other questions; but there seems to the Court to be, from intimations of the District Attorney, that there is a sharp difference between counsel for the defendants and the District Attorney as to the pertinency of certain evidence; and none of your questions yet have presented squarely to the Court that evidence; none of your questions have sought to elicit that evidence; so I think that my ruling on it one way or the other,

at this time, would be premature; it would be in anticipation of what you are going to do, rather than what you have done or have sought by your questions. Proceed.

Mr. Weinberger: Will you read the question, Mr. Stenographer?

(Question repeated by the stenographer as follows:)

"Q. In what capacity did you represent the United States Government?" A. I was the unofficial representative of the Ambassador of the United States in dealing with the Soviet *de facto* government for several months.

Q. You mean Mr. Francis, the Ambassador to Russia? A. Ambassador Francis.

Q. And that was because of the Soviet or the Bolsheviki Government—had not at that time been recognized by the United States?

Mr. Miller: I object to that question, your Honor.

The Court: Now, that does not make any difference—what had happened between the United States and the Soviet Government; that has nothing to do with the case.

Mr. Weinberger: I am establishing, if the Court please——

The Court: I know what you are trying to establish, and the Court will not permit you to establish that. It can not be a defense to the charge made in this indictment.

Mr. Weinberger: At this time I have not reached a point, as far as this witness is concerned—I am first trying to elicit from the witness, for the benefit of the jury, exactly Mr. Robins' position in Russia and,

by that, to give the weight of Mr. Robins' testimony to it, so the jury may have the full benefit of it.

The Court: I think you have disclosed that very fully. Mr. Robins was over there, doing Red Cross work. He was co-operating, in some fashion, with the American Ambassador there for certain purposes, and he did, in pursuance of some understanding or authority of the Ambassador—he did that which he did do, having certain communications or coming in contact with the Soviet Government over there.

Now you have fully disclosed what Mr. Robins was over there for and his activities.

The question in this case is: Are the defendants guilty of the charge in this indictment? They had nothing to do with Mr. Robins being in Russia, nothing to do with his activities there, and in no way that I can conceive of can Mr. Robins or his activities in Russia be made a part of this case.

Mr. Weinberger: But the question of the Bolsheviki relations with the United States——

The Court: Yes; and the Bolsheviki and the other factions of government, or the *de facto* government in Russia, has nothing to do with the charge here; and I think it is the duty of the Court to restrict the evidence in this case to the charge contained in the indictment.

Mr. Weinberger: As I understand the indictment, if the Court please, it charges the defendants with issuing the two pamphlets, or agreeing to issue two pamphlets, which

attack the action of the United States' Government in reference to Russia. That is the only charge before the Court.

Their defense depends upon two things: The first, was the action of the United States Government in reference to Russia legal?

Second: Was the action of the Bolsheviki government against the United States pro-German, or did they, as a matter of fact, as I am going to try to prove, offer the United States control of the railroads of Russia, so that America could control all goods and keep them within the border of Russia, so that Germany could never get them?

I am going to attempt to prove that the Bolsheviki government offered control of all the natural resources of Russia, so that Germany could not get a single bit of material aid, and then I am going to contend that in this indictment the defendants were absolutely correct when they objected to the intervention in Russia by a military armed force; and that is all, I believe, your Honor, perfectly proper to present within the issues of this case.

The Court: I am very glad, Mr. Weinberger, that you have been frank with the Court and stated your position; and the Court will be equally frank and try to be equally as candid, or equally as explicit, I should say.

I do not think that the matter you have just suggested to the Court, or the matters that you have just suggested to the Court, can in any wise be a defense in this case.

I do not believe that it is within the power of any man to violate a statute of the United

States, and then set up in justification his ideas as to what the Government should have done or should not have done in that fashion, and set up a superior wisdom to the organized Government of the United States and the authorities who have spoken and acted for it.

Now I think your question brings up that issue. Whether or not the United States, in the legal exercise of authority, and the Congress having passed laws, and the President having acted under those laws—whether or not the operations of the Government of the United States can be assailed under such law, or the act of the President can be assailed under such law, because some man or some woman who happens to be in this country and under this Government, and who happens to be not a citizen of the country, sets up a superior wisdom and starts a propaganda against the Government in the operations that it is engaged in.

Now, I can not assent to that, and that will be my instruction to the jury. That is my view of this case, and I intend to give you the fair exception and allow it to be squarely presented.

Mr. Weinberger: Might I answer your Honor's legal proposition?

The Court: No, I don't want a debate with you, Mr. Weinberger. I will not permit any debate. I will let you ask any question.

As to that proposition, when you come to the argument of the case hereafter, then you might—I would not object to hearing you

on it; but my mind is made up on this. I had an intimation in the beginning of the case, from what you said and from what the District Attorney said, that this theory of defense would be raised by you, and I am firmly convinced that it can not be a defense in this case.

According to my opinion, you can see what it would lead to. It would permit a defendant in any case to justify, as under the Espionage Law—to justify these laws that are found to be necessary for enactment in these distressful times, these laws which have for their very purpose the prevention of the acts of people who seek to interrupt the lawful operations of the Government—you can see it would allow of the setting aside of those laws.

Now the charge in this case is, in its very nature, that these defendants, by what they have done, conspired to go and incite a revolt; in fact, one of the very papers is signed "Revolutionists," and it was for the purpose of avoiding—a purpose expressed in the paper itself—the purposes of the Government and raising a state of public opinion in this country of hostility to the Government of the United States, so as to prevent the Government from carrying on its operations and prevent the Government from recognizing that faction of the government of Russia, which the Government has recognized, and to force the Government of the United States to recognize that faction of the government in Russia to which these people were friendly.

Now, they can not do that. No man can do that, and that is the theory that I have of this case, and we might as well have it out in the beginning.

You are candid enough, and I am indebted to you for it; that is, for your frank statement of your theory of this case; and your theory and mine are at war, they cannot be reconciled. Possibly you may be right; I will give you the full chance to have that matter reviewed, but at this time I think it would serve no good purpose for you, or me either, to say more on this. I have reached, upon reflection, a mature conviction that your proposed defense and your theory of the rights of these defendants, that your theory of their supposed rights—that is, of these defendants—is not well taken.

Mr. Weinberger: Will your Honor instruct the jury to disregard your Honor's opinion as to the legality?

The Court: I do.

Mr. Weinberger: As to the illegality or legality of this evidence?

The Court: I say that I thought I would be just as frank as you were. You said—in fact, you know, and I will instruct the jury, that what you said is not a part of the evidence, nor what I have said, which was called for by what you had said; that is not a part of the evidence, and nothing that the counsel have said and nothing that I have said on the matter, gentlemen, in your hearing just now, is a part of the evidence in the case, and you will disregard it when you come to consider it upon the issue of fact that I shall probably submit the case to you upon.

Mr. Weinberger: And that any expression that the pamphlets themselves are illegal is a question for the jury, and not a matter of your Honor's opinion on it.

The Court: Certainly. I am going to leave that for the jury.

Mr. Weinberger: If your Honor please, I agree with the Court that the defendants need not believe that they have a right to break the law of the United States. That is a question to be decided by the jury: whether they ever did break the laws of the United States.

The Court: As a matter of fact, I fully agree with you about that.

Mr. Weinberger: And my contention—I am frankly stating it to the Court—is that because they had a different view as to the acts of the United States Government, that they have no right, on that ground, to break the law; but my contention is that they have not broken the law; that they have not violated the Espionage Law; and that, in addition, they were perfectly justified in getting out these pamphlets because of the nature of the act of the President of the United States in sending an army to Russia without an act of Congress declaring war.

The Court: I do not think that that can be a defense in this case.

Mr. Weinberger: I asked your Honor on my motion whether your Honor will take judicial notice, which has the same effect as if introduced in evidence, that Congress has not, for instance, declared war on Russia, and that the acts of the President in

reference thereto need not be proven, and I intend to ask your Honor to instruct the jury that as a matter of fact Congress has never declared war on Russia.

I will ask your Honor, as a matter of fact, to direct this jury that the sending of an army into the territory of a foreign country is an act of war.

The Court: Well, suppose I should agree to that; still, that is an abstraction, and I would be compelled to tell the jury that it has nothing to do with the case. I would not, or should not, quote, in so serious a manner, perhaps, that well known expression from an old comic opera which we used to have here a few years ago—I should hold that while I would agree with you on the abstraction, but in the language of the popular—I believe it was in an opera—that that abstraction, like "the flowers that bloom in the spring," has nothing to do with this case.

Mr. Weinberger: And I would also ask your Honor—it might not have anything to do with the case, but this is a matter for the jury, and not for your Honor.

The Court: I shall not permit the jury to try the case on what I consider to be legal abstractions, so far as this Government and this case is concerned.

Mr. Weinberger: Would your Honor rule, at this time, that you would not instruct the jury, as a matter of fact, that war has not been declared on Russia, and that the President has sent an army into Russia, and that that is declaring war?

The Court: I will tell the jury, incidentally, and I shall also tell the jury that that is not the issue in this case, and I shall confine the jury to a consideration of the issue raised by the indictment.

Mr. Weinberger: And that if they are criticising the act of the President, which he had no right to do, that we have a right to protest against that act?

The Court: I don't have to say that, Mr. Weinberger, and I will instruct the jury fully on that subject. And it is with due deference to you, I think, to say that it is a waste of time for you to suggest, and for me to pass upon, a mere abstract question.

The question here is, as I understand it: You want to elicit from this witness certain facts, and so forth, that you think justifies these defendants in believing that the Bolsheviki were right in Russia, and that the opponents of the Bolsheviki are wrong in Russia.

Mr. Weinberger: That is correct.

The Court: And this case cannot be made to turn upon that.

Mr. Weinberger: Might I state further, one further proposition, and that is: That the act of the President in sending an army into Russia was absolutely unconstitutional, and they had a right to protest—that is, this case?

The Court: No; that would not and cannot be the issue.

Mr. Weinberger: But that is the indictment.

The Court: That cannot be made the issue here, and we cannot have a defense of that kind to the indictment here.

Mr. Weinberger: That is a question that the jury will have to pass upon under this indictment.

The Court: I think not. I shall give a specific charge, and in order that you and I may not have any controversy about your position or mine, I ask you now to reduce that proposition to writing as a special instruction to the jury, and then, unless I change my mind, I will refuse it and then it will be squarely presented to the reviewing court.

I want to be perfectly fair, as I hope you will accord me that desire, and I think you might as well come to the issue in this case, and when there is a positive divergence of opinion between you and me on a matter that you think is material to the case and I do not think it is material to the case or a part of the case, I think that you ought to have the ruling of the Court in an unmistakable way, and that is what I am going to give you, if you and I know how to do that, and I think we do.

Mr. Weinberger: May I ask a series of questions and then—it will take about ten minutes, of this witness—and then have your Honor rule on each one?

The Court: I am going to do that for the purpose of having the question fairly presented to a reviewing court.

Now, Mr. Robins, you need not answer these questions, and I am doing this in order

to have this question fairly presented to the Appellate Court. You are a lawyer and you quite understand the purpose of my allowing this.

Q. Did you have a letter from Mr. Francis to represent the United States as a go-between—I don't mean that word "go-between" in an offensive way—I mean as an intermediary between Mr. Francis and the Bolsheviki government after the Bolsheviki government overthrew the Kerensky government?

Mr. Miller: I object to the question as immaterial.

The Court: That objection is sustained, and the defendant is allowed an exception.

Q. Did you ever have in your possession some part of the documents published by Mr. Sisson, known as the Sisson documents, and also as the Bolsheviki documents, Mr. Sisson being the director of the Department of Foreign Propaganda in the Public Information Bureau?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are given an exception.

Q. And which of those pamphlets did you have?

Mr. Miller: I object to that.

The Court: I sustain the objection, and the defendants are allowed an exception.

Q. Did you investigate these documents and did you reach a conclusion that they were false?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants allowed an exception.

Q. Why did you not communicate these documents to the United States Government when you had them in your possession? Was it because you reached the conclusion that they were false?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Do you know who communicated those documents to the United States?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. If your name was signed to the telegram sending those documents to the United States, was that name signed with your permission or by your direction?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. If not, was the signing of your name a forgery?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Did you show these documents to Mr. Sisson, and did not he agree with you that they were forgeries?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Didn't you say officially to the Kerensky cabinet, in respect to some of these documents, and did they not admit to you that the documents were forged and unreliable and untrue?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. After the diplomats of all the allied countries broke relations with the Russian government, and after the Bolsheviki revolution, did they not make an agent between themselves and the Bolsheviki government, and were not you appointed that agent?

Mr. Miller: I object to that question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Is it not true that the Soviet government, particularly before the ratification of the Brest-Litovsk treaty, asked you to bring about an understanding with the Allies, with a view of continuing the war, on the part of the Soviets against Germany, on condition of material aid, and that was to consist of transportation, instructors for the army, materials and food?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Have you not a protocol or document to that effect in your possession, and did you not have such a document or documents or protocols in your possession or under your control?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Was not that protocol drawn in your office as a conversation between you and Mr. Trotzky, and was not that put in the form of queries put forward by the Bolsheviki government to the United States?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Isn't it true that the Russian government never received a reply through you or from the Allies or from the United States in any way in answer to those queries?

Mr. Miller: I object to that question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Don't you know that the offer of co-operation was made to Washington through you?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Was not the offer of co-operation between the Bolsheviki government and the Allies and the United States made to Mr. Francis and then to the United States?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Haven't you reason to believe, and haven't you been told by officials in Washington, that that offer was received by the Government of the United States and never made public?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Who was the public official or public officials who told you that?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. As far as you know, was any answer ever made by the United States to the offer of co-operation by the Bolsheviki government against the Russians—against the Germans?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Don't you know that the Soviets offered to put the railroads under the control of the Americans, so that no material of any kind could get into Germany?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Was not a similar offer made to the English and French, to put the railroads under control of the Allies or any of them?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. In the case of England, did not Soviets offer to put the Black Sea fleet in the hands of the British navy so as to save it from the Germans?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. In the case of the French, did not the Soviets offer to trust the reorganization of the Red army to the French officers to enable them to continue the fight against Germany?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Now, Mr. Weinberger, isn't that about enough of those questions?

Mr. Weinberger: I have but two or three more of these questions, your Honor.

The Court: Don't you think you have asked enough to show the ruling of the Court and the divergence of the opinion between you and the Court, so that you can have the matter fairly reviewed by the Appellate Court?

Mr. Weinberger: No; I have three more questions that are very important that I would like to have.

The Court: Very well. Go on. All this may be more or less interesting, but as I have said, in my opinion, it has nothing to do with this case.

Mr. Weinberger: Of course, I am of the opposite opinion.

The Court: I know, and I wanted you to have the matter in an unmistakable way.

Q. Isn't it a fact that the French and Belgian ambassadors and the Czecho-Slovak leaders agreed that they were to be transported by the Bolsheviki through Siberia and then shipped from Vladivostok to the western front, and isn't it a fact that these promises were made to your knowledge?

Mr. Miller: I object to the question.

The Court: Objection sustained. Note the exception.

Q. Isn't it a fact that the French and Belgian ambassadors and the Soviet government agreed to arm, equip and feed and transport these Czecho-Slovaks to Siberia—or through Siberia to Vladivostok, and then they were to be transported to the western front?

Mr. Miller: I object to that question.

The Court: Objection sustained. Note the exception.

Q. Isn't it a fact that a promise was made by the French and the Belgian ambassadors and by the Czecho-Slovak leaders that they were going to go straight to Vladivostok and from there to the western front, and would not stay in Siberia or in Russia?

Mr. Miller: I object to that question.

The Court: Objection sustained. Note the exception.

Q. Isn't it a fact there is absolutely no evidence that there were any armed German or Austrian

war prisoners operating in Siberia as alleged by the American statement on intervention?

Mr. Miller: I object to the question.

The Court: Objection sustained. Note the exception.

Mr. Weinberger: I have only a few more questions.

Q. Isn't it true that at the request of Mr. Trotsky, the members of the American and British military missions made a trip to investigate the situation in Siberia, and they made a report that Austrian and German armed prisoners were not in control of the Bolsheviki forces in Russia?

Mr. Miller: I object to that question.

The Court: And suppose I would allow the question and go into it and then the District Attorney, suppose he would offer to say that Trotsky had been bought by the German government to control Russia, that would not be anything or have anything to do with this case at all, and I would not let him show it.

Mr. Weinberger: But the reports of our officers that there were no troops there in Germany——

The Court: You see the Pandora's box there? See how that would open up! There you would be championing Trotsky and Lenine on one hand, and what is the District Attorney to say? To use a vulgar expression, it would be "swiping" them on the other hand, and we would forget all about the issues in this case, and we would find ourselves trying Lenine and Trotsky, which is something I do not intend to do. I have

enough trouble trying these people here in the United States, and God knows I am not going into Russia to try to try anybody there.

Mr. Weinberger: Could not your Honor see, if we did have the facts—and this is my proposition: If we did have the facts that the Austrians and Germans were not controlling the Bolsheviki army in Siberia, and were not going to get the food and material, then the excuse of the Allies and the American Government as to why they were sending troops in opposition to the Russians in Vladivostok, if it showed——

The Court: Whatever that showed, it does not justify them, these defendants here, to commit what they are charged with having committed here.

Mr. Weinberger: I agree with your Honor, but our contention would be that these pamphlets did not violate the law, and that is going to be my contention before this jury.

The Court: I will let you go to the jury, but—and you can contend to the jury what those pamphlets that are written in plain English state, and those that were in Yiddish have been translated into plain English, and I will let you address the jury on that.

Mr. Weinberger: But cannot your Honor see my proposition in this?

The Court: I think I do, but I cannot agree with you about its correctness.

Mr. Weinberger: May I state it again: That if we are—and I believe your Honor will charge the jury that Congress has not declared war on Russia, and second that the

President as Commander-in-Chief would not have the right to send an army into a foreign country without such a declaration of war——

The Court: Now, Mr. Weinberger, that is the same old case of the "Flowers that bloom in the spring, tra la, having nothing to do with this case." That has nothing to do with this case, and I am going to hold this case down to the charge made in the indictment and the proof of evidence pertinent for and against that charge. I shall not go out into any larger field than that.

Mr. Weinberger: May I ask your Honor this as a legal proposition: If the President of the United States did an act unconstitutional and someone denounced him for that unconstitutional act, would not your Honor rule that we could show that his act was unconstitutional and uncalled for?

The Court: In a proper case where that was at issue, perhaps so. To illustrate—I won't illustrate, as illustrations always get you farther away from the case, they bring on a new debate, illustrations do, so let us stick to this case here. That is not the issue suggested by your questions here, and I am not trying that sort of a case. We are trying this case and as plain as language can make it, a case on the part of the Government is stated in the indictment, and as plain as language can make it the case on your side is stated by your plea of not guilty.

Mr. Weinberger: Correct.

The Court: Now, I cannot hear you to state and set up this extraneous matter, these

things foreign to this case, as in the nature of a plea of confession and avoidance of confession, or introduce the fact that I may be guilty of everything charged in this indictment, but seek to avoid it by setting up a matter that has nothing to do with the case.

Mr. Weinberger: That is the exact point that your Honor has——

The Court: That has nothing to do with the case, so I don't think that it serves any good purpose for me to say any more.

Mr. Weinberger: May I answer your Honor's proposition? You know it might confuse——

The Court: I do not want to carry on any debate with you; all I want to do is to define my position and to give you a fair, square ruling.

Mr. Weinberger: And I would like to define my own: That we do confess on behalf of five of these defendants, and we are going to have them take the stand, that they gave out the pamphlets as a matter of fact, but that is not a confession that they broke the law; that is a question for the jury which I will argue before the jury, that fact, the giving out of those pamphlets by five of these defendants, that that is not a violation of law.

I am reading from Exhibit 1: "The President was afraid to announce to the American people the intervention in Russia——" "His shameful, cowardly silence about the intervention in Russia reveals the hypocrisy——" and then comes the sentence which I just read again—and then it goes on, "The Presi-

dent was afraid to announce to the American people the intervention in Russia. We capitalistic nations cannot afford to have a proletarian republic in Russia." Here are my points, your Honor, that this is within the issue in this case. "Instead, he uttered beautiful phrases about Russia which as you see he did not mean, and secretly, cowardly, sent troops to crush the Russian revolution." And I am going to put in his January 8th speech in evidence, which I presume your Honor will take in evidence under your previous ruling that the acts of the Executive are before the Court.

This goes on and says: "Instead he uttered beautiful phrases about Russia, which as you see he did not mean, and secretly, cowardly, sent troops to crush the Russian revolution." Now, we are going to prove that he did send troops, and that furthermore he didn't have a right to send troops to Russia under our law.

The Court: Does the Government consent to any such thing?

Mr. Miller: I am objecting to it on the ground that it is wholly immaterial to the issue.

The Court: I don't care what your grounds are, but you should put it on whatever grounds you choose, but you have stated it is immaterial. And I sustain that objection, and the defendants have an exception.

Mr. Weinberger: I am reading now from Exhibit 1. And they go on: "Will you allow the Russian revolution to be crushed? You! Yes, we mean you, the people of America."

And then at the end is the "P. S. It is absurd to call us pro-Germans. We hate and despise German militarism more than do your hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House."

The Court: That circular, Mr. Weinberger, from which you are now reading is already in evidence and has been read in evidence. What is your question?

Mr. Weinberger: My point is that if we would show that in their standing and upholding of the Bolsheviki, that the Bolshevikis are not pro-German, this Espionage Act is to help the United States as between the war of the United States against Germany, if their stand with the Bolshevikis can be shown not to be pro-German, but pro-American and pro-liberty and pro-the-people, my contention is that it is within the issues in this case to show that the Bolsheviki in overthrowing the Kerensky government——

The Court: What is the question? I understand your argument, but what is the question?

Mr. Weinberger: It is along this line, and has your Honor ruled——

The Court: I have ruled or will rule on your argument when I come to instruct the jury, but I want the jury to have some evidence to pass on. What is your question, and I will rule on your question now, if you have a question.

Mr. Weinberger: My question I would repeat—my questions in reference to the Czecho-Slovaks, especially in view of the sec-

ond paragraph, as follows, of Government's Exhibit No. 2 in the indictment:

"America together with her Allies will march to Russia, God forbid, to interfere with the Russian affairs and to help the Czecho-Slovaks in their struggle against the Bolsheviki."

If I can show that there was an agreement between the Bolsheviki and the French and the Belgians and the other Allies, to pass through Siberia——

The Court: You want me to rule on that proposition?

Mr. Weinberger: Yes; I would like to have you if you would permit me to finish my statement.

The Court: Oh, of course.

Mr. Weinberger: If there was such an agreement, that they were to leave Siberia and go to the western front and the Bolshevikis feed them, equip them and give them transportation and then instead of leaving Siberia they came back and fought the Bolsheviki, I can show that the alleged reason of sending an army into Russia was not true, and these defendants would have a right in these pamphlets to denounce it, and call to the attention of the American people that false reasoning for intervention in Siberia and in Russia.

The Court: If you could show that, I would not permit you to show it in this case, because I do not see it has any materiality or pertinency to the issues involved here.

Mr. Weinberger: In the protesting against an illegal act, and we would be admitting that——

The Court: Now, you are getting off into an abstraction and when you use the words "a legal act" that is absolutely an abstraction, but when you bring it down by name to a particular case, to particular acts, why it is not altogether an abstraction.

Mr. Weinberger: I will name the particular case, your Honor, if the Court so desires.

The Court: I do not desire anything, Mr. Weinberger.

Mr. Weinberger: I meant merely to say that I can do that.

The Court: I have no desire on either side of this case, except to try to do what I should do in a matter of this kind: To make explicit rulings on the law and to preside and conduct the case fairly. That is all I desire in this case, that is all the desire I have.

Mr. Weinberger: I believe I have the rulings, practically, as far as Mr. Robins is concerned, of the Court in answer to these questions.

The Court: Yes; I think we have thoroughly gone into your theory and the difference of the opinion of the Court in regard to your theory, and I think it is all well understood from the questions that you have asked or proposed to ask Mr. Robins, or have asked him, and which the Court has not permitted to be answered. I think it is fairly presented.

Mr. Weinberger: May I ask him one more question?

The Court: You may, sure.

Mr. Weinberger: Does your Honor rule that if the defendants should prove that

everything they say in the pamphlets were true outside—we could not prove that?

The Court: I would not want to commit myself to that, you know. That would involve my taking everything said in that pamphlet into consideration. I would have to sit down and analyze that pamphlet and go through it word by word, each proposition, in order to answer that question. I do not think that is hardly fair to the Court.

Mr. Weinberger: There is only the broad proposition, if the Court pleases, and that is that the defendants are charged with violating the Espionage Act by protesting against intervention in Russia.

Mr. Miller: May I object to the argument and be permitted to say that it has nothing at all to do with this case, and would not be a defense to an indictment where people are charged with a conspiracy to violate, and a violation of the Espionage Act?

Mr. Weinberger: And our defense is that the language, as far as the facts are concerned, that we personally believed and think it is absolutely true and states the facts, makes a true statement of the facts, and that it is a protest against the act of the President of the United States, and is unconstitutional.

The Court: I understand, and the Court cannot agree with your theory as to what is a good defense in this case—to the charge.

Mr. Weinberger: I have no more questions for Mr. Robins.

ALBERT R. WILLIAMS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Williams, where do you——

Mr. Weinberger: If the Court please, I will just qualify Mr. Williams, and ask him about ten questions.

The Court: Very well, then. Let us have it understood that the stenographer will note the objection and the exception, and I suppose they are the same questions, or the same line of questions that you put to Mr. Robins, relating to the same matter?

Mr. Weinberger: I will first qualify him.

The Court: Do not answer any one of these questions, but you may answer the preliminary questions.

Q. Mr. Williams, where do you live at the present time? A. Irving Hotel.

Q. And what is your business? A. Journalist and lecturer.

Q. How long has that been your business? A. About two years.

Q. Did you go to Russia or Siberia representing any newspaper of this city? A. I went there with credentials from the *New York Evening Post.*

Q. Did you go over Siberia, or what part did you go over? Will you state to the jury what part you traveled over? A. All through Siberia and the Volga region, Kiev, Moscow and Petrograd, the Baltic regions and Riga front, and various peasant villages, the Ukrane and other sections of Russia.

Q. And you came in contact with the leaders of the Bolsheviki regime in Petrograd? A. Yes.

Q. Had relations with them? A. Yes, sir.

Q. What was the date of your arrival in Russian territory? A. The middle of June, 1917.

Q. Was that before or after the Bolsheviki overthrow of the Kerensky government? A. Before.

Q. Were you there after the Kerensky regime failed? A. Yes.

Q. And what department of the Russian government did you have any relations with?

Mr. Miller: I object to the question as immaterial.

Mr. Weinberger: That is merely preliminary.

The Court: Is there any objection to his answering this question?

Mr. Miller: No; I do not think so.

The Court: Answer that.

A. The Department of Foreign Affairs, and the Department of Red Army, the Department of International Revolutionary Propaganda in Germany.

Q. That is the propaganda from the Bolsheviki into Germany to cause a revolution in Germany? A. Yes——

Mr. Miller: I object to the question.

The Court: I sustain the objection and I give you an exception. Ask your questions, Mr. Weinberger.

Q. Did you have anything to do— Mr. Williams, the Court has ruled you should not answer any of these questions and the Government has an objection and I have an exception.

Mr. Miller: It will not be necessary for me to physically put in an objection to each question?

The Court: No. It is agreed that it is not; it is agreed by counsel for the defendants that all of these questions may be propounded to the witness, all of the questions *seriatim,* and in the case of each question the stenographer may note an objection on your part and note an exception on the part of Mr. Weinberger, and the stenographer understands it, so you will not answer any questions, Mr. Witness.

Q. Did you not have partial control of the publishing of propaganda to be sent to Germany, into the German trenches, to overthrow the present German government by revolution?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. Have you any of that propaganda with you in your possession or under your control?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. Is it true that the Naval Intelligence Bureau has most of your papers at the present time?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. Was the nature of the propaganda sent by the Bolsheviki into Germany the kind that was gotten out before the overthrow of the Czar?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. How many million copies were sent into Germany and the German trenches to bring about a revolution in Germany?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. Isn't it a fact that after the Brest-Litovsk treaty that the propaganda by the Bolshevikis was carried on against Turkey?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. Isn't it a fact that the strikes in Germany were brought about by the sending in of this propaganda into Germany by the Bolshevikis?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. Isn't it a fact that a great amount of money was paid by the Bolsheviki government both before and after the Brest-Litovsk treaty to continue that propaganda and bring about a revolution in Germany and the overthrow of the Kaiser?

Mr. Miller: I object to that.

The Court: Objection sustained. Exception to the defendants.

Q. Is it not a fact that the Czecho-Slovak troops sent into Central Siberia were sent there on their way to the western front after an agreement between the French and the Belgians and the leaders of the Czecho-Slovaks with the Soviet, and did not, as a matter of fact, the Soviet arm and equip in all ways and feed the Czecho-Slovaks until they got to Vladivostok?

Mr. Miller: Your Honor, might I object to the reading of any more of these?

The Court: What is that?

Mr. Miller: I wish to object to the reading of any more such questions as they form no part of the evidence and they are not related to any issue here except that the jury hears all these questions, and that that is the purpose of putting the questions.

Mr. Weinberger: Your Honor ruled that all of this comes in for the purpose of the record on appeal, you said that before the jury, and your Honor does not mean——

The Court: I did not say that at all, Mr. Weinberger, but I do mean to say that the jury will in no sort of way regard these questions as a part of the evidence—will you gentlemen? Don't you understand that Mr. Weinberger's questions are not a part of the evidence in this case? Is there any man on the jury that would consider them a part of the evidence of this case? I would like to see the color of his hair and if he has not any hair on his head like I have none, I would like to see the color of his eyes! Now, what

is the use of taking up the time about such things? Go on with your question.

By Mr. Weinberger.

Q. Were you in Vladivostok when the Czecho-Slovaks with the aid of the Japanese overthrew the Bolsheviki government?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. When the Soviet first took control of Vladivostok were any men killed?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. When the Soviet government in Vladivostok was swept away, how many were killed, and how?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. When one of the newspapers wanted to show that the Kronstadt sailors had established a republic of their own, did one of the newspapers in Petrograd even publish a replica of money that they claimed the sailors' republic of Kronstadt were publishing, and was not that shown to be a forgery?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Were not they forging many and various documents in Russia?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Did you form a legion for fighting the Germans in Moscow?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Did you have an acquaintance with the Red army staff?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. What was their attitude towards the war with Germany?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. How soon did they expect to fight with Germany again?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. How many soldiers of the Red army did you ask when they expected to fight with Germany, and what was their general answer?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Were orders given to dismantle the factories in Petrograd even to the extent of destroying the machinery when it was feared that the Germans would capture the city?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. How far was that carried out?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Did Lenine tell you that any Soviet leader who allowed any material to fall in the hands of the Germans ought to be shot?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Were Bolsheviki officers court-martialed when they ordered a retreat before German troops?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. What is the official position of Lenine and Trotsky?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Are not the members of the People's Commissariat elected by the people Soviets, and are not the Soviets elected by election districts, that is, by the

peasants and working people like assemblymen and aldermen are?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Isn't it a fact that 95 per cent. of the people, including the women, have a right to vote in Russia?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Isn't it a fact that the people who have not a right to vote in Russia are speculators in people's necessities, officers of the old order, and millionaires?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Isn't it a fact that the men of the Soviet and the Board of Aldermen joined with the several delegates at Moscow, and that composes the body of the Russian Assembly of Soviets?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. And are not the leaders like Trotsky and Lenine elected by the assembly of the Commissariat?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Isn't it a fact that the disorder and the bloodshed in Russia at the present time is brought about by the attempt of the anti-revolutionists, monarchists, Germans and some of the Allies to crush the people's government in Russia?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Do any large percentage of the people of Russia want intervention?

Mr. Miller: I object to that.

The Court: Objection sustained, and the defendants are allowed an exception.

Q. Is it not a fact that even not only the Bolsheviki, but all the large property owners are opposed to intervention?

Mr. Miller: I object to that question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. You, as a matter of fact, learned Russian and lived with the Russian people, and also with the soldiers in Russia?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Is it not a fact that when the Soviet government in Vladivostok was overthrown that the Allies obtained the books and all the papers and other material of the Soviet headquarters?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Was any evidence found or made public that the Soviets were in league with Germany after these papers were turned over to or taken over by the Allies?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Was there any evidence that the Czecho-Slovaks in eastern Siberia were being fought by armed German or Austrian war prisoners operating there?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Was an appeal made to America on the Fourth of July in Vladivostok before the American Consulate?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Is it not a fact that they laid coffins before the American Consulate and stretched out their hands, and didn't their orators step forward and say, "On this, the day of celebration of your independence, we appeal to you Americans to understand that we also are fighting for our liberty"? And did any one of the American Consulate answer?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Isn't it a fact that Vladivostok is known as a Bolsheviki city?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Isn't it a fact that the next action that was taken after the overthrow and the new election was held that the polls were patroled by Allied soldiers and sailors?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. And is it not a fact that, despite that, the Bolshevikis were again re-elected, but were prevented from holding their seats by the Allied soldiers and sailors?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Is it not a fact that the newly-elected Bolsheviki Russians were all put in jail by the Allied troops?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Is it not true that the Bolsheviki army operating north of Vladivostok, the commander and 400 of his subordinates, were Czecho-Slovaks?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. And that the second in command was for two years in the English army in the present war?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. And that the third in command was an American?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Q. Is it not a fact that when there was a general strike in Vladivostok in protest against the intervention that the Chinese coolies were brought in to break the strike, and that the Russian government and Russian Czar had never dared to import Chinese coolies before?

Mr. Miller: I object to the question.

The Court: The objection is sustained and the defendants are allowed an exception.

Mr. Weinberger: If the Court please, I desire to offer in evidence and read to the jury President Wilson's address delivered to the joint session, that is, certain parts of it, on the 8th day of January, 1918, as one of the acts of the Executive of our Government.

The Court: Do you want to read it now?

Mr. Weinberger: I do.

The Court: You can read it as a part of your argument. I would not care to stop the hearing of the case now for it.

Mr. Weinberger: I will only read three or four paragraphs of it.

Mr. Miller: Your Honor, may I ask what that is introduced for; what is the purpose for which it is wished in evidence?

Mr. Weinberger: A part of the issue is as to the words of the President, and then afterwards the acts which he did, and the protests of the defendants in relation thereto.

The Court: You would just as soon have it as part of the argument then? What I am trying to do is to hasten the case—not unduly, of course—but the hearing of the matter of the evidence. I would prefer it then to be read to the jury on the argument.

Mr. Weinberger: It would only take two minutes to read it, your Honor. I have no desire to delay this hearing.

The Court: If you insist on reading it now, all right.

Mr. Weinberger: This is President Wilson's address to Congress stating the war aims of the United States, delivered in joint session on January 8th. I will skip the first paragraph and put in the second (reading):

"Once more, as repeatedly before, the spokesmen of the central empires have indicated their desire to discuss the objects of the war and the possible basis of a general peace. Parleys have been in progress at Brest-Litovsk between representatives of the central powers to which the attention of all the belligerents has been invited for the purpose of ascertaining whether it may be possible to extend these parleys into a general conference with regard to terms of peace and settlement. The Russian representatives presented not only a perfectly definite statement of the principles upon which they

would be willing to conclude peace, but also an equally definite program of the concrete application of those principles. The representatives of the central powers, on their part, presented an outline of settlement which, if much less definite, seemed susceptible of liberal interpretation until their specific program of practical terms was added. That program proposed no concessions at all either to the sovereignty of Russia or to the preferences of the populations with whose fortunes it dealt, but meant, in a word, that the central empires were to keep every foot of territory their armed forces had occupied—every province, every city, every point of vantage—as a permanent addition to their territories and their power. It is a reasonable conjecture that the general principles of settlement which they at first suggested originated with the more liberal statesmen of Germany and Austria, the men who have begun to feel the force of their own peoples' thought and purpose, while the concrete terms of actual settlement came from the military leaders, who have no thought but to keep what they have got. The negotiations have been broken off. The Russian representatives were sincere and in earnest. They cannot entertain such proposals of conquest and domination."

Then I am skipping the next paragraph (reading):

"The Russian representatives have insisted, very justly, very wisely, and in the true spirit of modern democracy, that the conferences they have been holding with the Teutonic and Turkish statesmen should be held within open, not closed, doors, and all the world has been audience, as was desired. To whom have we been listening, then? To those

who speak the spirit and intention of the resolutions of the German Reichstag of the 9th of July last, the spirit and intention of the liberal leaders and parties of Germany, or to those who resist and defy that spirit and intention and insist upon conquest and subjugation? Or are we listening, in fact, to both, unreconciled and in open and hopeless contradiction? These are very serious and pregnant questions. Upon the answer to them depends the peace of the world."

The President then states his fourteen terms of peace, of which I will read only the sixth:

"VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest co-operation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome in the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy."

I have one more thing to read—a telegram signed by the President of the United States, on or about March 9th, which reached Russia on or about March 12, 1918.

The Court: What is the suggestion?

Mr. Miller: I would like to see that before he reads it. I don't know that the President said it. I don't know anything about the authenticity of this. There is no evidence here.

The Court: That can go over until after recess, so that the District Attorney can examine it.

Mr. Weinberger: May I ask your Honor to make one further ruling, so as to eliminate Mr. Sisson's coming here? Will your Honor make the statement on the record, on my offer to read the Sisson documents or to put Mr. Sisson on the stand, as to what action you will take in regard to the Sisson documents?

The Court: I will state that you offered to do that, and I assume that questions similar to the ones you asked Mr. Robins will be asked.

Mr. Weinberger: And Mr. Williams.

The Court: And that you propose to do that, and put Mr. Sisson on the stand, and propose to ask him those questions; and, upon objection by the Government, the Court declined to let you do so, and you except.

New York, October 21, 1918.

Trial resumed pursuant to adjournment at 10.30 A. M.

Present: The Court, counsel and jury, same as before.

Mr. Weinberger: The last thing I proceeded to do when the Court adjourned was

to read into the record the President's message to Congress on the Soviet, sent about March 9, 1918, and received there March 12, 1918, as follows——

Mr. Miller: I object, if your Honor please.

The Court: I am not going to permit you to read it again.

Mr. Weinberger: Well, I didn't read it yet. Mr. Miller questioned it, and I handed it to him.

The Court: Yes. I sustain the objection. What the President may or may not have done cannot justify these defendants in the charge here made.

Mr. Weinberger: We don't claim, if the Court pleases, that there is any justification, as far as what the President did or did not do, but we do claim, however, that it goes to the question of the intent, and we hold that under the Espionage Act the question is one for the jury and not for the Court.

The Court: They cannot say that the President did, or what you or anybody else in this case did—that they did so and so, and, therefore, that they were right in doing so and so.

Mr. Weinberger: No, that is not my point, if the Court pleases. If your Honor will follow me, my point is this:

The Espionage Law requires a certain wilful—I think the indictment reads the very same way, that they wilfully intended to do so and so, and so and so; that is a question for the jury, along with the intent of the defendants.

The reasons of their doing certain acts, from all of which it will be a question for this jury and not for the Court, to say whether the defendants intended to do certain acts, and thereby violate the law. In other words, when I admit that the defendants did certain acts, I do not admit that they violated the law.

Admitting that they did certain acts, it will then be a question for the jury to pass upon, whether they were violations of law, and therefore this goes——

The Court: I think I will make that perfectly clear to the jury, what the word "wilfull" means, and we will have no difficulty about that.

Mr. Weinberger: Therefore, my point is this: The actions of the President, his writings, his speeches, and the defendants reading those writings and speeches, go to the question of their intent that the jury will have to pass upon.

The Court: That comes right back to the proposition that they are trying to establish, that their conduct squares with that of the President, but that is not going to justify them in doing what they did.

Mr. Weinberger: No, no; surely not.

The Court: The matter is perfectly plain; I perfectly catch your view, and you cannot do that. Whatever the President may have said cannot justify them under this charge here. We are trying them for what they did, not what somebody else did, or what somebody else said. And, if they had followed the illustrious example of the Presi-

dent all the way through, they would not have done what they did do—they would not have done it, I say, and they would not have been here on trial.

Mr. Weinberger: Then I come again to the question in the Espionage Law, which reads that anyone who shall wilfully utter or print——

The Court: There is another thing, you have taken one particular paragraph out of what the President says; you have picked that out, and it is a perfectly familiar rule that you cannot take out one paragraph of anything and get the whole mind of the author of the whole discourse.

Mr. Weinberger: But in this instance the point now is, I am taking the entire telegram.

The Court: If you did, the District Attorney immediately would say, "I want to read so and so, what the President said, which contradicts the idea that Mr. Weinberger just read."

Mr. Weinberger: And he would have the right to do so.

The Court: No, he would not, because I would not allow it, as that would involve virtually the process of trying the President for what he may have said or expressed in words, and I am not going to do that.

Mr. Weinberger: Your Honor, that is not so in this case. While I am not reading part —I am reading the entire telegram, I am not reading part of that, my offer does not go to read a part of it.

The Court: That is not admissible on any theory.

Mr. Weinberger: May I say to you, your Honor—may I make it clear to you——

The Court: I quite perfectly understand what you are driving at, and you cannot do it; that is all, but I will hear you.

Mr. Weinberger: I am now going to read to you a statement of law:

For the purpose of proving intent, it is competent to show statements and acts of the prisoner previous to the commitment of the offense——

The Court: The jury will have no misunderstanding as to what the law is. I shall give them in unmistakable terms, and I shall leave it to the jury to infer the intent, or derive the intent, from all the facts and circumstances.

Mr. Weinberger: All the acts?

The Court: That is, all of these acts of these people, and if the jury finds that they printed and circulated these things, that is one fact and circumstance for the jury, and then all of the circumstances under which they printed them and distributed them, off the tops of buildings or out of windows they scattered them, and all that—I am going to leave it to the jury, from all those facts, to say whether or not that squares with good, honest intention.

You and I do things that we are not ashamed of, and we are not violating the law, and we come out in the open; but when we do things questionable, that is the time when other methods are resorted to, and I am going to leave it to the jury to determine whether the intention is honest or not.

Mr. Weinberger: The jury would take into account the fact that the meetings in New York were broken up——

The Court: I am going to leave all the facts in this case to the jury.

Mr. Weinberger: And the other point I want to make now, and that is this, that the actions of the defendants, their history, their personal history, their actions in throwing it out of the windows——

The Court: And the fact that they are avowed anarchists, as you state to the jury, and that they want to break up all government—I am going to let the jury take that into consideration and say if that squares with honesty and sincerity of purpose in this case.

Mr. Weinberger: Yes; I am perfectly willing to go to the jury on that case.

The Court: You will have to say that to the jury yourself.

Mr. Weinberger: I do, and I intend to stand on it, your Honor. My contention is this, that if they are to pass upon the facts, they should have all of the facts; and I think that on that question, on this question of getting the facts before the jury on this proposition that has to do with the distribution of this literature, that the speeches that were delivered by the President of the United States and the letters he sent are very important, and they have come to the attention and reading of these defendants.

The Court: The question before the jury, if it were a case where the defendant was indicted for homicide, and he was charged with

having taken a pistol and put it to the head of another man and fired the pistol and killed the man, you might say he did not intend to do that.

But I would have very little respect for a jury that would come in with a verdict that he didn't have any intent.

Mr. Weinberger: Even then, in that case, as in the cases that I have here, which I would like to show your Honor, I would have a right to show the circumstances and intentions of that case—of the defendant in that case.

The Court: Oh, yes. You have shown the circumstances, and the jury is not bound, however, by my opinion; but I think that is what you have shown and stated to the jury.

Mr. Weinberger: I except to your Honor's statement.

The Court: I say the jury is not bound by it, but I distinctly tell them they are not bound by it.

Mr. Weinberger: The question of the intent of the defendants in giving out these leaflets, it is a question of what they read of the President—what the President said, and, therefore, they reacted, and then it will be a question for this jury to decide, inasmuch as the defendants read the President's speeches, inasmuch as they read the President's telegram——

The Court: I understand that position, and all that, and I am not going to allow you to do that.

Mr. Weinberger: And I want to follow that by——

The Court: And I won't allow you to read what the President said in that case.

Mr. Weinberger: I will take my exception at this time, and when the matter comes up in its regular way I will ask the proper questions.

The Court: I will give it to you fair and square, on what the President said, when you come to ask those questions, in the same way as I did the other day in the matter of those questions which you desired to ask and which I ruled upon.

Mr. Weinberger: I except to your Honor's ruling, and I will follow the suggestion of your Honor; and when I put these defendants on the stand I will ask them these simple questions, putting the question squarely before your Honor, when they are on the stand, and let it come up for a direct ruling from time to time.

The Court: I won't permit you to offer it now.

Mr. Weinberger: Well, I will withdraw my offer now, and submit it later.

JACOB ABRAMS, one of the defendants, was called as a witness in his own behalf and, being first duly sworn, testified partly as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Abrams, where do you live? A. 5 East 104th Street.

Q. New York City? A. New York.

Q. Are you a citizen of the United States? A. No.

Q. Where were you born? A. Russia.

Q. How long ago? A. Twenty-nine years ago.

Q. In what part of Russia? A. Odessa.

By the Court.

Q. Where did you go to school in Russia? A. Odessa.

Q. How long ago was that? A. I was twelve years of age; from seven to twelve I attended school.

Q. How long ago was that? A. How long ago? I am twenty-nine now—that is seventeen years ago.

Q. What were you taught there in that school? A. Taught Hebrew.

Q. Where did you acquire your anarchy? A. In America.

Q. How long since you began to study English? A. The day I came to the United States.

Q. How long ago was that? A. Well, eight years.

Q. You are not a citizen of the United States? A. No, I am not.

Q. Never been, so far as to have taken out your first papers? A. I did not.

Q. You know you cannot become a citizen because you are an anarchist, don't you? A. I found it out after four years being in the United States.

Q. And you are an anarchist? A. I am.

Q. Now, then, did you not intend, by these pamphlets, to obstruct and to hinder the Government of the United States and to bring it into disrepute, and, therefore, intended to help to break up the Government of the United States? A. No, not at all.

Q. What was it for? A. What was it for?

Q. What was your object? A. My object was to help Russia, because I have seen it was——

Q. You are willing to break up the Government of the United States and start a revolution here?

A. Oh, no, not for that purpose. That is my theory, that I don't believe in governments, and the intent of doing that was because I have seen that it was a combination here of all the governments, of the Allies and America, against Russia, against the Bolsheviki in Russia——

Q. What did you mean by advocating a revolution here in this country? You signed these pamphlets with the name of "Revolutionists." A. I am a revolutionist.

Q. And you meant to get up a revolution in this country, didn't you? A. I want the people to protest, and no matter in which way they should make their protests, but that no army should be sent to Russia, to break the Russian Republic. When the President of the United States first says he is against sending an army, and then he goes ahead and sends an army without asking Congress——

Q. Then you were trying to get up a revolution in this country to break up the United States Government? A. It is the plan of the Workers of the World, that they should not be ruled over by armies, but that they should be kept here away from going to Russia——

Q. You said that you wanted anarchy and revolution? A. Yes.

Q. That is your purpose in getting out these pamphlets? A. Oh, no; no, it is not my purpose, and that is not anything to do with the purpose of the pamphlets. The purpose of the pamphlets was to protest against intervention, and it is only a question of philosophy, of our philosophy, of what our theory is of government, that I believe in.

Q. Well, you did have a meeting, and you agreed upon these circulars? A. Yes, we did.

Q. And you printed them? A. I did; I printed them.

Q. And you, all together, circulated them? A. As much as was in our power to do it, we did.

By Mr. Weinberger.

Q. When you gave out the pamphlets, what was your intention towards changing the action of the United States, in reference to Russia?

Mr. Miller: I object to that as immaterial, what his intention was about changing the attitude of the United States in regard to Russia.

The Court: I sustain the objection.

Mr. Weinberger: I will change my question.

Q. What was your intention when you gave out the pamphlets?

The Court: Let him answer that?

A. My intention—and one thing I would like the Court to understand, which is very important to call attention to in explaining the answer to that last question——

Q. Give us that in your own words, and take your own time? A. Yes; I want to explain it fully. Now, if you remember when the Bolsheviki government went into power in November, last year—now the Bolsheviki government at that time announced before the world that they had entered into power, with the intention of bringing peace in Europe. Now, at that moment, when we have received the news in the United States—especially I mean, when I say, "We," I mean the Russian colonists, those

that devoted their time to the Russian revolution in 1905, those that tried to overthrow the Czar—those colonists, now that there was going to be a new government which will not be for the benefit of 2 per cent. of the people, but will be for the benefit of 100 per cent. of the people—why, we all stood up for that government here in the United States. Then when first the United States Government stood up for the Bolsheviki and recognized them, and stretched out their hand to the Bolshevikis, and when the Bolsheviki began to negotiate with Germany to make peace in August, they knew that Germany would not give them a fair chance, they knew—there is not a Russian that didn't know that Germany—the German Imperialistic Government knew that they would not give them a fair chance, but it was absolutely and physically impossible for the Bolsheviki to withstand, and they took up the negotiations because of the great forces that they knew would overrun them in Russia, as they ran into Belgium, and the Bolsheviki were all for making peace—they made the proclamation that they didn't want any more of war, and everybody was sympathizing with them at that time, and at that time they needed the aid of everybody that they could get to help them conclude a separate peace. Under all the circumstances, there was nothing else for them to do. Nobody knows, except those that were in Russia at that time, what a desperate situation they were in at the time that that conference took place between the Germans and the Russians, and they were compelled to make the Brest-Litovsk peace—they didn't have any chance to do anything else; they were absolutely helpless, and Germany was at their throats. It was at that time that here in the United States those of us who were keeping

watch of things over there demanded action, so that Russia might have a chance, and that the Russian republic might be protected. We sent a telegram to the President of the United States, in our endeavor to get a chance to go over there—we wanted to go over and help them, but they said, "No, we shall stay here, we cannot go." We were disappointed, and it was impossible for us to do anything. We remained here in the United States. It was absolutely beyond our power to do anything. And then, when the Bolsheviki completed—concluded that miserable peace with Germany, between Germany and Russia, why Japan was the first one to break into Russia and to try to crush the new republic, and the Allies on the other side, with the exception of the United States at that moment, applauded the action of Japan in coming into Russia at that time. And, at that time, when President Wilson took the stand that he did, we were absolutely for Wilson, for he said he would not send military forces, but that he was going to send over an industrial commission. When he said that we believed in Wilson, we believed that he would do what he said—we don't know—but then, when we find later that the President is willing to give his consent——

Mr. Ryan: I object to all this, your Honor.

The Court: I was letting him go on now, just to show that my idea was right, and my idea all along was that he was trying to justify the violation of this law by repeating, in another form, what we have been hearing from the soap boxes—or we used to hear here from the soap box orators on the street corners—but that is what the law does not permit now.

Mr. Weinberger: If he violated the law —but that is a question, not for the Court, but for the jury.

The Court: Of course, I am going to leave that to the jury, but I was just saying that even if he did have that sort of a mental attitude, that was no justification for a violation of the law.

By Mr. Weinberger.

Q. Tell your intention in giving out these pamphlets and what led you to give them out? A. My intention to give out those pamphlets was for the sole purpose to speak to those that love Russia and the Russians and would sympathize with Russia, and to protest against the intervention in Russia. That was my purpose.

Q. Intervention by whom? A. By the United States and her Allies, because, first, the United States said that they would not allow an army to be sent to Russia, and this was of the Allied intervention in Russia, and that is the reason for printing the pamphlets, and speak openly to the public, describing the situation. The action of the Allies towards Russia was far severer than my words there in the pamphlets, they were really mild in comparison.

Q. Before you issued these pamphlets put in evidence by the Government, and before there was any intervention in Russia, did you read the President's message to the Congress of Soviets?

Mr. Ryan: I object to that.

A. I did.

The Court: I sustain the objection. I will not permit it, and I don't want any more of it. Let us get along.

Mr. Miller: I submit that it is immaterial what the President did at that time.

The Court: And I sustain the objection.

Mr. Weinberger: And I take an exception, and I will try to lay another foundation for this telegram.

By Mr. Weinberger.

Q. What was the date when you first had this pamphlet printed? A. The date?

Q. Yes. A. I exactly don't remember the date.

Q. About what date? A. Well, we had that pamphlet printed, if I am not mistaken, August 20th.

Q. And where was it printed? A. It was printed in my own shop.

Q. What is the address of that shop? A. 1582 Madison Avenue.

Q. And did you write that pamphlet? A. This pamphlet?

Q. Yes. A. No, I did not.

Q. I didn't get that? A. I did not write that pamphlet.

Q. Who did write that pamphlet? A. Who did write that pamphlet?

Q. Yes. A. If I am not mistaken, Schwartz did it.

Q. Who had anything to do with the writing of that pamphlet besides Schwartz?

Mr. Ryan: Which pamphlet?

Mr. Weinberger: There are only two.

The Court: These leaflets that are in evidence?

Mr. Ryan: There are two, if your Honor please, one in English and one in Yiddish, and I want to have him distinguish which one he refers to.

A. I meant in Yiddish. Schwartz wrote the one in Yiddish.

By the Court.

Q. Schwartz wrote the one in Yiddish? A. Yes.

By Mr. Weinberger.

Q. And did he write the one in English? A. The one in English? That was written up by Lipman.

By the Court.

Q. Lipman, one of the defendants here? A. One of the defendants here, yes.

By Mr. Weinberger.

Q. And did you set the type in that place on Madison Avenue? A. Yes, I did set the type, and I printed both pamphlets.

Q. And how long did it take you to run them off, and how many copies did you run off? A. I ran off 5,000 copies of each, and on account of lack of money I did not run more.

Q. What did you have to do with the distribution of these pamphlets? A. I didn't have to do anything with the distribution.

Q. Who did you give the pamphlets to, to distribute? A. I have given them to Lachowsky and Mollie Steimer.

Q. Did you give any to Lipman? A. To Lipman?

Q. Yes. A. No, I did not.

Q. Or to Lachowsky? A. Lachowsky, I did.

Q. Did you have anything to do with the actual, physical distribution to the general public? A. No, I did not, not at all.

Q. Did you know, when you gave it to the others, that they were going to distribute it? A. That is the purpose of it, for distribution.

Q. That is the purpose of giving it to them, for that? A. The purpose?

Q. Yes. A. The purpose of giving it to them, that they should distribute them between the workers and should read them and understand the situation about Russia.

Q. And what day were you arrested? A. I was arrested on August 23rd, at 8 o'clock, or twenty minutes to 8.

Q. Where? A. On the street corner, or Fifth Avenue and 104th Street.

Q. Where were you taken? A. I was taken into the Police Headquarters about 10 o'clock—no, about ten minutes of 10, to my best recollection. There I was taken, right into a big room, in a room was a major and two United States officers. They asked me questions, and also the police asked me questions and I answered their questions, every one of them.

By Mr. Weinberger.

Q. "You were deceived by the wonderful speeches of the man, President Wilson." What speeches did you mean? A. I meant those speeches referring to Russia, since the overthrow of the Czar's regime. The President said in one speech that we should not send an army to Russia, but we should send an in-

dustrial commission to Russia. All of those speeches of President Wilson were made before Congress, or made them at different occasions.

By the Court.

Q. Then you thought you had a right to censor what the President of the United States should say to Congress under his sense of official responsibility, and that if it did not accord with your ideas, that you ought to publish these things? A. No; not that.

Q. How do you answer that? A. I will answer that I did not mean to censor, but I questioned the justice of the man. I questioned his views when he could say one day one thing and to-morrow another thing.

Q. That is the reason why you called him a hypocrite? A. It is a hypocritical action.

Q. That is why you said he was a coward in the White House? A. No; not the only reason.

Q. And that is why you said— A. I got a reason for that.

Q. That troops were secretly and cowardly sent to Russia to crush the revolution? A. Yes, it was secretly.

Mr. Weinberger: Will your Honor ask the witness to answer as to his reason for writing that?

The Witness: The reason why I have said that it was secretly and cowardly to send troops to Russia was because just a week before we learned that there was an army in Vladivostok, the President has said we will not send the military to Russia, but will send an industrial commission. We know it takes more than two weeks for an army to

go from here to Vladivostok, so the President knew of the army going to Vladivostok. Why did not the President come out before the people and say, "We have sent an army"?

Mr. Miller: I object to all this.

The Court: Yes; you do not know what my ruling is going to be, brother Weinberger, and I take it that the jury is going to be guided by the instructions of the Court.

Mr. Weinberger: Yes, your Honor. The answer is to the question you asked. Mr. Miller objects.

The Court: I did not have any idea that he would go to any length on it, but that he would answer those questions categorically, which he could have done.

The Witness: I am not a professor.

The Court: You could answer them yes or no.

The Witness: It is not a question to answer yes or no. It is a question of action which must be explained.

The Court: Of course, and when they don't suit you—the actions of the President and Congress don't suit, then you think you are perfectly right in printing and circulating this sort of thing.

The Witness: It did not suit the people of Russia, 180,000,000 in population.

By the Court.

Q. And, therefore, you had a right and were perfectly justified in printing this? A. It was not a question of right, it was a question of duty to protect the Russian Revolution.

Q. You thought it was your duty then to print, to protect the people of Russia, and you think that justified you in doing it? A. Because I didn't break any law.

Q. You thought you broke no law? A. No; not at all, under the constitutional right of free speech.

By Mr. Weinberger.

Q. You feel you had a right to criticise any action or any words of the President? A. Yes. And if we would not have such a right, we ought to fight for it.

Q. Did you include and have in mind also the President's speech or message to the Congress of Soviets, and what did he say in it? A. When the President made that speech before Congress?

Q. I am talking about the communication to the Soviet. A. It meant to the Soviet, as far as I recollect. I remember the telegram sent to Russia; he told he was going to extend help for the benefit of the Russian people. I remember his speech when the President said plainly it was time for the Russian people to overthrow that system they have lived under for 300 years, and he is glad this is done and he will stretch out his hand and help them out.

Q. What did you mean when you said that "the President's shameful, cowardly, silence about the intervention in Russia, revealed the hypocrisy of the plutocratic gang in Washington and vicinity"? What did you mean by the plutocratic gang in Washington and vicinity? A. I meant by the plutocratic gang in Washington and vicinity, those that are urging every action that is against the people, and it is done underhanded, not openly before the people. It is done in the lobbies of Congress. It is done in the lobbies of the Senate, just telling

what bill shall pass and what not. The plutocratic gang, they are afraid to come out openly. They do it underhanded.

By the Court.

Q. May I ask you how many times you ever went down to Washington and saw Congress in session? A. No.

Q. Did you ever go to Washington? A. No.

Q. Did you ever see Congress in session? A. No; I read the reports.

By Mr. Weinberger.

Q. I believe I asked you the next sentence, "The President was afraid to announce to the American people the intervention in Russia." I think you answered that he did not say anything about it, until after the intervention had already taken place?

The Court: If you have done that, let us not do it again.

Q. I will pass on to the next one. You say, "He is too much of a coward to come out openly and say we capitalistic nations cannot afford to have a proletariat republic in Russia." Didn't you contend that? What was the meaning of the words, "capitalistic nations"? Did you include the United States? A. The meaning of that was——

Q. No; answer my first question. Did you mean the United States when you said "capitalistic nations"? A. Yes, I do.

Q. What do you mean by the words, "capitalistic nations"? A. I meant by the word "capitalistic nations," that it is a country that is controlled by a small number of people. The wealth of production is controlled by them, and the Russian people—

Q. No; I will come to that next question.

By the Court.

Q. You meant to say that you thought the United States was controlled by just a few people, and not by a majority of the people; is that what you thought? A. Yes.

By Mr. Weinberger.

Q. Coming back to the pamphlet again, he, meaning the President, utters beautiful phrases about Russia, which as you see he did not mean, and secretly and cowardly sent troops to Russia to crush the Russian Revolution. Tell us what you meant by that, what caused you to say that? A. Caused me to say—after listening to all of these words, after the President answers to the Allies that the United States will not participate in going into Siberia, after knowing all that, and then when it was announced by the news that there is an army in Vladivostok, just a week later, after all these speeches, I have said and I hpoe, and I say it to-day—not that I have said, but I say it to-day that this was a secretly, cowardly action, not to come out before the people and say he believed in intervention, and we shall send soldiers to Siberia. This is my belief this present moment, that the President acted cowardly not to tell the people. I would come out and not criticise the President, but I would criticise the nation why it should go and conquer foreign soil, but this was done before he said we shall not go, and soldiers have been sent—unless it was without the knowledge of the President, he ought to recall them from there. If it was with the knowledge, I say the President made a cowardly action, saying one thing and doing the other.

Q. Do you realize the President is Commander-in-Chief of the Army and Navy? A. Yes.

Q. Do you know that Congress never did declare war on Russia? A. Yes.

Q. Didn't you know that Congress never authorized the President to send an army into Russia? A. No.

Q. I say you know they never did? A. I do.

Q. And you know that as a matter of fact, no power in the United States can declare war on another nation except by Congress of the United States? A. I do know.

Q. And only after Congress declares war on another nation, that the President and Commander-in-Chief has a right to send an army into that country? A. Yes; I do know it.

Q. As a matter of fact, Congress never did declare war on Russia? A. Certainly, never did.

Q. Tell us what you meant when you wrote, "Do you see now how German militarism, combined with Allied capitalism, to crush the Russian Revolution"? A. I meant it is in the interest of capitalism all over the world, it is in the interest of militarism of Europe to keep in subjection Russia. For one part, the militaristic power was there to keep Russia in subjection. The Allies of America were included, when they invested millions of dollars in Russia. They knew it cannot be paid back. It was their duty—not their duty—it was their object to crush the republic of Russia and put a government which shall secure the money they have given to Russia before, and I meant by the militaristic power of Germany, with the capitalism of the nations of the Allies, I said, but Guggenheim said it at a banquet.

The Court: We are not going to try Guggenheim.

The Witness: I used his words. He is an American pretty near.

Q. When you used the words, "Now, do you see how German militarism," etc., what did you mean by "Now"? A. The action of the Allies through Siberia. The action of Germany through Poland. That I say, "Do you see now the combination of capitalism," because before they all hollered that only Germany invaded Russia, nobody else. See that Germany should crush, but afterwards, a few months, the Allies going on the other side of Russia, so you see there is capitalism, no matter where it lies, in Germany or the United States. It is all alike. They can't stand a republic.

By Mr. Weinberger.

Q. You say that this—referring to the previous sentence, "You see now how German militarism, combined with capitalism"; then you say, "This is not new. The tyrants of the world fight each other until they see a common enemy, working class enlightenment. As soon as they find a common enemy, they combine to crush it." What did you mean? A. I meant by that when they do as in time of war, when they fight between themselves, as 90 per cent. of the fights are purely economic, and when they see the workers rising and grasping the idea of the war, who is back of it, and then these workers are beginning to demand justice and right, and the Governments who have been fighting each other turn into an ally, fighting their own workers to keep them in submission, so they should be able to rule further. I have stated further that in eighteen——

Q. We will come to that. I asked you something before that. When you used the expression, "Working class enlightenment," what did you mean by that? A. When the workers begin to realize.

Q. What did you mean by the expression, "Working class enlightment"? A. What I mean by that, I mean their understanding of things. Then when they see that, they begin to understand.

Q. Understand what? A. To understand that these—that this system, the system of war, the system of fighting is for the benefit for a few, they then combine to crush those that begin to understand, to know their trickery ways, or to compel those to fight that have been fighting them all their lives.

Q. Outside of the question of war times, what does "Working class enlightment" mean? A. Outside of war times it means to know the economics, to know the system, to know how you produce—people that grasp—the workers grasp that. That means the working man's enlightment.

Q. When you say that in 1815 a nation combines under the name of the Holy Alliance to crush the French Revolution, what did you mean by that? A. Well, that was the time when it broke out a revolution in France. It was a class revolution. The people had refused to obey the orders of the few. At Paris, at that time it took place the Paris Commune. Germany—all of the small Germany being neighbors to France, was afraid that France would remain a revolutionary country; that they combined with the capitalists of France and they opened the door and let the German army in to crush the French Revolution. It was a combination of the French monarchy with the German monarchy to crush the French Revolution, and blood was spilled just on account of that combine of the monarchs of France and Germany.

Q. The meaning of that sentence, the next sentence, "Now, militarism and capitalism combined, though not openly, to crush the Russian Revolution." What have you to say about it? Explain what you meant by the "Now militarism and capitalism combined, although not openly, to crush the Russian Revolution." What did you mean by that? A. I say that the capitalistic nations would rather see a Government like in Germany, than to see a Government of the workers, because it was said already we would rather conclude peace with an intrigue government than conclude peace with workers like Bolsheviks. So I said that we Bolsheviks is spreading it through Europe. They are afraid the time will come when capitalism is coming to a finish, just as the system of feudalism. They are afraid to come to a finish. They are combining to crush that spirit.

Q. Are you in favor of the United States crushing German militarism? A. I should say every Russian Revolutionist is in favor of that.

Q. Are you in favor of Russia fighting German militarism? A. We have pledged ourselves to go and fight it, but didn't get a chance.

Q. Would you be willing to go to Russia to fight German militarism? A. Any time.

Q. Wouldn't you help send propaganda from Russia into Germany, to start a revolution there? A. We have done that in '97, where I was sent to Siberia for it, just on the border of Austria, and I was sent to Siberia for it.

Q. You asked this question then: "What have you to say about it? Will you allow the Russian Revolution to be crushed, you, yes, we mean you, the people of America." What did you mean by that? A. I meant by that that the people that un-

derstand the Russian situation—those that understand the Russian Revolution, they know how—what circumstances, after 300 years, have succeeded in freeing themselves from the Russian dynasty. Hundreds of thousands have been sent to jail in Siberia. Will you allow now for the sake of God Mammon to crush the Russian Revolution? That is what I meant, I sympathized with the revolution. Will you allow it to be crushed? And I appealed to them to do all they can not to allow that revolution to be crushed under any circumstances, because the revolution was for the purpose of the Russian people to begin to enjoy life, which they were entitled to do, after 300 years of struggle.

Q. When you said "Russian Revolution," what did you mean? A. When I say "Russian Revolution," well, I mean the Russian Revolution which has changed from one system to another, and now it is identifying the system that they changed, from the system of Czarism into the system of an absolute democracy of the country for everybody, and that is what I meant, that no one of those that really believed in democracy, not in democracy for one, democracy for everybody—they should protect democracy, it shall remain in Russia; not they should help break it for the purpose of making it as it was.

Q. When you say the Russian Revolution calls to the workers of the world for help, what did you mean by that? A. The Russian workers, when they have concluded that peace—that so-called peace, they had issued a call. The first call went to Germany to see them start some disturbance in Germany, so Germany shall not be able to send an army into Russia. They didn't succeed with that. The workers of Germany had been controlled by the——

Q. When you say the Russian Revolution grows, workers of the world rise and put down your enemy and mine, what did you mean by that? A. I mean by that that the workers' republic, everyone was afraid of losing their grip, because the richer class of Russia, which is only about 5 per cent. of the Russian population, had appealed to all of the Allies to aid them so as to be able to crush the workers.

Mr. Miller: I object to that, your Honor, as a statement of fact which cannot be substantiated.

The Court: Yes, not proper.

Mr. Weinberger: It is only what he meant.

The Court: Well, he said it. Let it go at that.

Q. Then you ended, "Awake, awake, you workers of the world." You mean, therefore, all those who work should awake to the situation of the intervention in Russia? A. The intervention in Russia.

Q. Then you defined what you meant by the words, "Russian Revolutionist"; and we don't have to go over that. Now, you had a postscript at the bottom: "It is absurd to call us pro-Germans." What did you mean by that, and are you pro-German? A. What I meant, because I have got as much use for a German parasite as I have got for an American parasite. If he is a parasite I have no use, and I knew the object of this present war is the control of the industrial Europe. I say it is absurd I should be called a pro-German, because in my heart I feel it is about the time the black spot of Europe should be wiped out.

Q. You are opposed to German militarism in every form? A. Absolutely.

Q. You would overthrow it and help overthrow it if you could? A. First chance.

Q. You say, "We hate and despise German militarism, more than do you hypocritical tyrants." Whom did you include and what did you mean by that sentence, "We hate and despise German militarism more than do you hypocritical tyrants"? A. I meant by that that we have more reason to denounce.

Q. We—do you mean— A. The working class, we have more reason to denounce German militarism.

By the Court.

Q. Than who did? A. Than hypocritical tyrants. Roosevelt was one in 1913, in Germany. To-day he hollers, "Down in Germany."

Q. One of the hypocritical tyrants was Roosevelt, another was Wilson, and another hypocritical tyrant was Taft? A. Taft went to the Czar of Russia, which I have no respect for him.

Q. He was one of them? A. He was a good friend of the Russian Czar.

Q. Opposition to German militarism, in that part you did not include Wilson? A. No; I can't say that.

Q. In other words, his fighting German militarism shows that as far as that is concerned, his action is not hypocritical? A. Always proved.

By the Court.

Q. You thought you paid sufficient respect to Wilson, when in the next line you referred to him as the coward of the White House, didn't you? A. Yes, sir; I did not have much respect for that address—his action to Russia.

Q. You called him the coward of the White House? A. Yes; I called him coward of the White House, because of his action towards Russia.

By Mr. Weinberger.

Q. And you had no reference to Germany? A. Absolutely none.

Q. And you were opposed and denounced German militarism? A. Yes. Leading anarchists right here in New York are fighting German militarism. It is a question of fighting German militarism.

Q. I now go to the Government's translation, Exhibit 2, headed, "Workers, Wake Up." "The preparatory work for Russia's emancipation is brought to an end by His Majesty, Mr. Wilson, and the rest of the gang, dogs of all colors." You referred to the rest of the gang and dogs of all colors. What did you mean by the preparatory work for Russia's emancipation is brought to an end?

The Court: We have started on the second leaflet, have we?

Mr. Weinberger: I have.

The Court: I thought you had finished the first one, headed with "The hypocrisy of the United States and our Allies," and winding up, "We have more reasons for denouncing German militarism than has the coward of the White House." Are you finished with that one?

Mr. Weinberger: I have.

Q. Will you tell us what you meant by that first paragraph? A. I object to that word, "gang," because in the original I did not have a gang. It is comrades in Hebrew. It is wrongly translated.

By the Court.

Q. You said you objected to the word "gang"? A. Yes, a better translation is comrades.

Q. I want to find out. The word "gang" is used, and "dogs of all colors." "Mr. Wilson and the rest of the gang, dogs of all colors." To whom did you refer as the rest of the gang and dogs of all colors? A. Well, when I said—first of all, those that are always together, and those that are always seeking only for their interest, just running for their bite. I meant them as dogs.

Q. Bear in mind my question. I said to whom did you refer when you used these words, "Mr. Wilson and the rest of the gang, dogs of all colors." To whom did you refer? A. I referred to those that want to crush the Russian Revolution, that were trying to go to Russia.

Q. To whom did you refer? A. The capitalists.

Q. Let me repeat it, "Mr. Wilson and the rest of the gang, dogs of all colors." A. Mr. Wilson, the rest of the gang—Mr. Wilson, I took him in in that gang.

Q. You referred to him as a dog, one of the dogs, one of the gang? A. I said the dogs of all colors, those that urged him to do what he was against to do it all the time.

By Mr. Weinberger.

Q. You say, "America, together with the Allies, will march to Russia, not, God forbid, to interfere with Russian affairs, but to help the Czecho-Slovaks in their struggle against the Bolsheviks"? A. I meant by that the Czecho-Slovaks were not part of the Russian people, merely prisoners of Austria; have been recognized already by the Allies, and the American soldiers are willing to help those, which

they are only helping the Slovaks. They are Austrian prisoners. So I say they did not go to help the Russian people.

Q. When you say you mean this in a sarcastic sense, "America, together with the Allies, will march to Russia, not, God forbid, to interfere with Russian affairs, but to help the Czecho-Slovaks in their struggle against the Bolsheviks," what struggle were you referring to?

Q. I now ask the witness what struggle he refers to in the second paragraph, when he says that "the Allies will march to Russia to help the Czecho-Slovaks in the struggle against the Bolsheviks." What struggle did you mean, and what facts were you referring to? A. The Czecho-Slovaks undertook by going in Siberia, and getting the aid of the Allies, to re-establish and put the old form of government in Russia, the Allies being sure they will send soldiers and ammunition so they will win their struggle.

By the Court.

Q. That is what you think they did? A. That is what I meant, and that is what they are doing.

Mr. Weinberger: His language is that "they shall not succeed in fooling the Russian immigrants and the friends of Russia in America." I asked the witness what does he mean, in what way were they trying to fool the Russian immigrants.

Mr. Miller: I object to that as immaterial, what he meant.

The Court: Now, if you will just answer briefly, answer it.

The Witness: They asked their support, and then they betrayed them. They asked for their support.

Q. Who is that? A. For the Russian immigrants all over the United States, asking their support and pointing out——

Q. Then betrayed what, you said? A. Betrayed them by going into their own lands and tried to crush them.

By Mr. Weinberger.

Q. You say, "Too visible is their audacious move." What did you mean by that? Were you referring to sending in the army?

The Court: Don't you think somebody knows what words mean sometimes? I think that is not essential. Go on to the next paragraph.

Q. "Russian immigrants, you who have the least belief in the honesty of our Government must not throw away all confidence, must spit in the face of the false hypocritical military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help in the prosecution of the war." What did you mean? A. I meant by that that the workers—the immigrants—all those that produced.

By the Court.

Q. When you referred to "our government" in there, what government did you refer to, the Government of the United States? A. I mean to the Government here, but I mean to the workers of the world.

Q. But here you said, "Those who have the least belief in the honesty of our government." Did you refer to the Government of the United States? A. To every government. When I say, "To our govern-

ment," I mean the government in general, because I speak to workers in general.

Q. I think it does not answer the question, "You who have the least belief in the honesty of our government"? A. Since last year.

Q. "Our government," what government did you refer to, as our government? A. To those that gov ern the people.

Q. You mean the Government of the United States, do you? A. All government.

Q. Don't you mean the Government of the United States? A. I included it also.

Q. All governments, our Government? A. Yes, a government all; I don't care if it is Japanese or German.

Q. No; but you go off with an argument. Now, I will ask you one at a time, and I want you to answer this question no or yes: "You who had the least belief in the honesty of our government," did you mean by "our government," to say the Government of the United States, yes or no? A. Yes, I did.

By Mr. Weinberger.

Q. You referred to the hypocritical propaganda which has fooled you so relentlessly. What military propaganda were you referring to? A. To the military propaganda—all military propaganda throughout the world.

Q. Tell us what military propaganda you referred to in the United States? A. I referred to the military propaganda here, that was sending things down on militarism, which absolutely under their own guidance of the Constitution is not allowed to be done.

Q. "With the money which you have loaned or are going to loan them they will make bullets, not

only for the Germans, but for the workers, Soviets of Russia." Are they doing that? A. Certainly.

By the Court.

Q. To whom did you have reference when you said "the money which you have loaned or are going to loan"? A. That is, to the workers.

Q. No, you could not have meant the workers. The workers have not loaned them any money. "With the money which you have loaned or are going to loan them they will make bullets." To whom did you refer? A. Seventeen million workers of the United States.

Q. They haven't loaned them any money. A. Seventeen million people have loaned some money.

Q. No, seventeen million people have loaned that. To whom did you refer when you said, "With the money which you have loaned or are going to loan them": Who is it that has loaned the money and is going to lend the money? A. The workers that are going to loan.

Q. When did the workers lend any money to the Allies? A. To the Government of the United States.

Q. Who has loaned any money to these people in Europe? A. The United States is the sole support.

Q. Then that is the United States you refer to when you say, "With the money you have loaned or are going to loan them," you meant the money that the United States has loaned to the Allies, and loaned it—some of it to the Russian Government?

Mr. Weinberger: Not in that sense.

Q. Didn't you? A. No; I mean the workers that gave their money to the Government of the United States.

Q. You say, "With the money you have loaned already." What workers—who was it that loaned this money? A. The people.

Q. What people? A. The people that produce.

Q. How have they—did you mean that? A. Certainly.

Q. The people haven't loaned them any money? A. Seventeen million.

By Mr. Weinberger.

Q. Were you referring to those workers who bought Liberty Bonds? A. Certainly; those that have bought, seventeen millions. That was the statistics of the Third Liberty Bond.

By the Court.

Q. You did not loan any of that money, you did not buy any Liberty Bonds? A. No; I did not, certainly. It was not a compulsory.

Q. If you could have defeated the Liberty Loan, you would have done it? A. No.

Q. "Workers in the munition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia now fighting for freedom." Did you mean bullets and bayonets are now being made? A. For intervention in Russia. I only objected to production when I stated that fact there, that workers, that you who produce bullets, you who produce bayonets, and these beyonets will be used against the workers of Russia—I called upon them not to produce bayonets for the workers of Russia.

Q. Are the bullets and bayonets they produced now being used against——

The Court: Hold on, you need not answer. That is going too far afield, Mr. Weinberger.

Mr. Weinberger: But it is a fact.

The Court: What does he know about what is going on over there?

Mr. Weinberger: There is an American Army——

The Court: I understand. You do not want him to go into things he knows not of.

Q. Tell us what you meant, then, by this last sentence in this paragraph, "Workers in the munition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom"? Did you mean exactly that? A. I meant——

Mr. Miller: I object to that.

The Court: I think it is pretty plain language.

The Witness: I meant what I said in regard to the Russian intervention.

Q. And you believed——

The Court: Don't ask him any more.

Q. Did you believe that the workers were making bullets, bayonets and cannon to murder not only the Germans, but the people in Russia who were fighting for freedom—yes or no? A. If an army is in Vladivostok, they must have bayonets.

Q. "You who emigrated from Russia, you who are the friends of Russia, will you carry on your consciences in cold blood the shame spot as a help to choke the workers, Soviets?" Please explain what you mean by the workers, Soviets? A. I meant by the system.

Q. What did you mean by the workers Soviet? A. I meant by the workers Soviet those that had

established already in Russia—northern Russia—established a form of government which to-day has proved to be the best in Russia.

Q. You call on these who emigrated from Russia and who are friends of Russia, "Will you give your consent to the inquisitionary expedition to Russia?" What did you mean by would they give their consent to such an expedition? A. Would they support the military intervention in Russia; and when I spoke to those that have themselves fought for such ideas themselves, fighting in Russia to-day, when they have got the government already, will they consent for somebody to go in and crush it—those that uphold these ideas.

The Court: Go on to the next.

Q. "Will you be calm spectators to the fleecing of blood from the hearts of the best sons of Russia?" What did you mean by that, "fleecing blood from the hearts of the best sons of Russia"—how? A. I meant by operation of the Allies, the United States in Russia will uphold, will stay calm and look at it, and do that work without protesting.

Q. How would you be taking the blood? How did you mean that you were taking the blood from the hearts of the best sons of Russia? A. Through military operations and breaking up the Russian Soviets, as they did in Vladivostok.

Q. By military invention, is that what you meant? A. Yes.

Q. You say, "America and the Allies have betrayed the workers." What did you mean? A. All of the promises that have been promised before, throughout their existence, were never fulfilled, and there now they call upon them to support the republic, which is a direct betrayal of the working class.

Q. You say, "Their robberies aims are clear to all men." What did you mean by that? A. The robberies aims—I meant by that they have really seen such a wonderful spot, Siberia, and it is a robbery game to get it and conquer it, and it is clear that those that know Russia, know Siberia, know who control the Russian market.

The Court: Go on to the next sentence.

Q. "The destruction of the Russian Revolution, that is the politics of the march to Russia." I presume a better word would be "the purpose of the march to Russia, the destruction of the Russian Revolution." That is the purpose of the march to Russia?

The Court: The word "politics" is the word they employ. I don't think you have improved it one way or the other by substituting "purpose" for "politics." We will let it stand like it was in the text.

Mr. Weinberger: Except it is a simpler word.

The Court: We will let the word stand.

Q. When you say, "The destruction of the Russian Revolution by America and her Allies, that is the politics of the march to Russia," what did you mean exactly? A. The politics of the intervention in Russia was, as I stated before, that their main aim is to go and take control of Russia, so that those who have governed Russia until now shall be able to be in power, and they have proven that since they went in Vladivostok.

By the Court.

Q. That is what you think.

By Mr. Weinberger.

Q. That is your opinion of the facts? A. That was done.

By the Court.

Q. You were not over there; therefore, you don't know. A. I know much about it.

Mr. Weinberger: We did offer to prove it by somebody who was over there.

The Court: We are not going to let you do it. Go on.

By Mr. Weinberger.

Q. "Workers, our reply to the barbaric intervention has to be a general strike." You mean a strike over here? A. I meant a strike in all those countries that wanted to go break up the Russian Revolution.

Q. To prevent the Russian Revolution? A. Absolutely.

Q. You let the Government know that not only the Russian workers fight for freedom, but also here in America lives the spirit of revolution? A. Certainly, because the Government was built on a revolution and our forefathers and the whole crowd——

By the Court.

Q. You say our forefathers? A. Yes; I have respect for them. We all are a big, human family, and I say "our forefathers."

Mr. Weinberger: Thomas Payn said——

The Witness: I say our forefathers, and I insist on it, because we are together a human family. Those that stand for the people, I call them father.

Q. And you wanted a general strike only on the basis of objecting to intervention in Russia? A. Exactly.

Q. "Do not let the Government scare you with their wild punishment in prison, hangings and shootings." Did you mean exactly what you said there, not to scare the people and shut up their mouths? A. Absolutely, if it is a question.

Q. Now, I will ask the witness, for the purpose of the record, what he meant, or whether he meant wild punishment as I have just stated it on the record, yes or no? A. Yes; wild punishment.

Q. Is that what you meant by wild punishment, the length of the term in jail? A. Yes.

Q. "We must not and will not betray the splendid fighters of Russia." Fighters of Russia for what? A. For liberty.

Q. "The workers ought to fight. Three hundred years had the Romanoff dynasty taught us how to fight. But, all rulers, remember this, from the smallest to the biggest, despite that the hand of the revolution will not shiver in a fight." Did you mean that? A. Yes.

Q. "Woe unto those who will be in the way of the workers." What did you mean by that? A. Those that will stay in the way of the wheel of progress that is rolling for the last fifty years, and some is trying to hold it back, and I say woe to those that stop it, because I say the wheel is stronger with all their force to stop progress to come. They had better step away, because they can't hold it back.

Q. When you say, "Let solidarity live," what did you mean? A. Solidarity, the big, human family throughout the world.

Q. All standing together? A. Absolutely.

Q. For the interest of all human beings? A. For the interest of all human beings.

Q. Not for the special few? A. No; not exactly.

By the Court.

Q. Now then, who did you mean when you said the rebels—when you signed that? A. I meant myself. I am a rebel and admit that I am a rebel.

Q. Rebelling against what? A. Against these conditions of life from twelve years of age.

By Mr. Weinberger.

Q. You mean the special conditions which give a few too much and the many too little? A. Just what I mean exactly.

Q. You mean the conditions which make, with all progress, great wealth on one side and extreme poverty on the other? A. I mean that.

Mr. Weinberger: I am leading him.

The Court: I don't want you to lead him. Ask him what he meant by it.

The Witness: I meant I am a rebel, and I meant this, those that rebel against the few, against those that have, regardless of the system, have succeeded in sitting on the backs of the great majority of people. I say I am a rebel because I will not do that, for the sake I may lose my personal liberty.

New York, October 22nd, 1918

The Court: Gentlemen, you may proceed.

JACOB ABRAMS resumed the stand.

Cross-examination by Mr. Miller.

Q. When did you come to this country? A. The beginning of 1910; I know I am eight years here.

Q. Been here eight years? A. Yes.

Q. Did you work at any trade or occupation in Russia? A. Yes, sir.

Q. What was it? A. Bookbinding and printing.

Q. The same trade you are in now? A. Exactly.

Q. How much did you make a week in Russia? A. I used to make about twenty to twenty-five dollars a month.

Q. How much do you make monthly here? A. About sixty or sixty-five dollars.

Q. Did you ever make as high as $30 a week here? A. Oh, no.

Q. What is the most you have received a week here? A. $27.

Q. $27 a week? A. Yes, sir; lately.

Q. $27 a week? A. Lately, yes, after organizing the union.

Q. In Russia, you made $27 a month? A. Sure.

Q. Did you, in connection with other Russians, offer the President of the United States, to go to Russia and fight on the side of the revolution? A. Certainly. We sent a telegram and we received an answer by the—the Russian Soviets of America sent a telegram to President Wilson, asking permission that we organize recruiting stations. We never received any reply.

Q. You were willing to join that kind of a regiment? A. Any moment.

Q. After the Russian Czar was overthrown? A. After the Russian Czar was overthrown.

Q. You would not fight in the Russian army against German militarism, for what reason? A. Because the Russian militarism and the German militarism was the same object, and I had no reason to shed blood for it.

By the Court.

Q. I will ask you then, just one other question. Did you say from whom you got the answer that the Russian Soviets of America could not form a regiment to go to Russia? A. From President Wilson—it may be from the secretary. I know it came from the Cabinet of President Wilson.

Q. I want to ask you one other question in reference to Prober. You said on your direct examination and in reference to Prober, that the only ones who had to do with the giving out of this pamphlet, and the agreeing to get it out were Lipman, Molly Steimer, Lachowsky, Rosansky and Schwartz? A. Agreeing to give out the pamphlets was I, Schwartz, Lipman, Molly Steimer and Lachowsky. The question decided of giving out, Rosansky wasn't in it, neither was Prober in it.

SAMUEL LIPMAN, one of the defendants, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Weinberger.

Q. Mr. Lipman, where were you born? A. Russia.

Q. How old were you when you came to this country? A. Sixteen.

Q. I show you Government's Exhibit No. 11, and ask you whether you wrote that? A. Yes; I did.

Q. "Now is the time that all isms should unite for action against the enemy of the Russian Revolution, which is indeed the only enemy of freedom, liberty and enlightenment." My question is, what enemy were you referring to that you should unite against? A. I meant capitalism of all the countries.

By the Court.

Q. What is the enemy that you refer to? A. I was referring to capitalism which invaded Russia, to crush it, and this is the only enemy of liberty, enlightenment and freedom, as I stated there

By Mr. Weinberger.

Q. This statement had nothing to do with being pro-German or against the United States in its war with Germany? A. No.

Q. "Why don't we protest against the action of our Kaiser, who, without asking the Congress, has sent troops to crush the Russian Revolutionists?" Was this written after the President had sent an army to Vladivostok?

Mr. Ryan: I object to that as immaterial.

The Court: I sustain the objection.

Mr. Weinberger: I submit the time, to fix the time.

The Court: Yes; I know. I sustain the objection.

Mr. Weinberger: I take an exception.

Q. "The radical press fears to show to the masses the hypocrisy of the United States and her Allies. Therefore, it is the duty of the revolutionists of

America and of their allied countries to call meetings everywhere and make known to the people that the Russian Revolution, which is the beginning of emancipation and enlightenment of the working class, is threatened by their rulers." You wrote that? A. Yes.

Q. You meant it? A. Yes.

Q. People's Exhibit A, attached to the indictment, entitled "The hypocrisy of the United States and her Allies," and which Mr. Abrams said he printed, you wrote, did you not? A. I did.

Q. And you gave it to Mr. Abrams to print? A. Yes, sir.

Q. What was your intent? A. My only intent to write this leaflet was to raise a protest against intervention in Russia by capitalistic nations.

Q. What were the facts which made you have the intent and made you write this pamphlet? A. Since I came to my understanding I have always thought that the government by the people, for the people and from the people, the workers, were the only ones. They produce all the necessities of life. They are the only ones that build the prisons where we are put and build the court rooms where we are tried, and I, therefore, thought the workers' government should be established. We should keep in power. I was overjoyed with the idea for the first time in the history of the world that we have a government by the people, for the people and from the people. When the Bolsheviks came into power President Wilson delivered speeches in various parts of the country favoring the Russian Government—that is, the Soviet Government. In his speech to Congress he said, "I stretch out my hand to the Bolsheviks." On another occasion he said, I think it was July 4th, he said, "We will not con-

clude peace without Russia." On another occasion——

Q. Just leave the other occasions out of all those speeches; and then what was the next thing that happened, that made you write the pamphlet? A. Then, after all of these speeches, President Wilson sent a telegram on the 12th of March to the Soviet Government where he appreciated the work of the government, and he said that the heart of the people of America was with the Soviet Government, and then in a few weeks later he sent, without announcing to the people, a military expedition to crush the Russian Revolution. That was my intent to write this leaflet.

Q. Those are the facts that made you have the intent and made you issue the pamphlet? A. Yes, sir.

By the Court.

Q. When the President did what you think he did, and it did not accord with your views, you thought you ought to break up the Government of the United States? A. It was not the question of my views. It was the question of the views of the people.

Q. You thought the Government of the United States ought to be hindered in its operations? A. I did not speak about government. The entire leaflet speaks about capitalism and not government. I had nothing to do with any government. I am a Socialist and believe in government. I believe in the proper kind of government, not capitalistic.

Q. When this government was not proper, according to your way— A. It was not a government.

Q. The President, you thought, and all that he was doing ought to be stopped and broken up? A. I thought when I know he is elected by the people,

and the people are supposed—they should protest against intervention.

Q. You wanted to stop what the Government was doing? A. It was not the Government; it was one official, and I protested against the official.

Q. The President of the United States? A. Yes, sir.

Q. You wanted to break up what he was doing? A. I did not want to break up. I called for a protest, which, as I understand it, from my knowledge of the Constitution, the people of America had a right to protest.

Q. What did you mean by saying "revolutionist"? A. You want me to explain what I mean by revolution?

Q. I want to know whether your intent— A. Do you know Washington and Jefferson and Franklin and all the rest had made this Government and this nation as it is?

Q. Did you not intend to incite or provoke or encourage resistance to the Government of the United States? A. Not to the Government—never did.

Q. Who was acting for the Government if the President was not? A. I thought it was the Congress and Senate that was supposed to represent the people of America.

Q. The President is the executive head. A. He is not the Kaiser.

Q. You intended to incite opposition to what the President did? A. I did not. I intended to enlighten the people about the subject, for, as I stated, the papers were afraid to state it, and I thought it was the right time.

Q. Now, did you not intend to bring the Government of the United States into contempt, or scorn or disrepute? A. Not the Government. There isn't a statement about the Government.

Q. Did you not intend to incite or provoke, or encourage resistance to the United States? A. Not to the Government, to individuals—to acts of individuals.

Q. To the President? A. To acts of individuals.

Q. He was the Chief Magistrate? A. He is the chief, but not the ruler.

Q. I understand, but the Government acts through the President, and you intended to incite opposition to what he was doing? A. I intended to incite opposition to every wrong act I understood to be wrong.

Q. You had the specific intention to make public opinion and arouse public opinion against intervention in Russia? A. Yes.

By Mr. Weinberger.

Q. Didn't you know, Mr. Lipman, that the Congress of the United States has never declared war against Russia? A. I did.

Q. Did you know from your study of history, that only Congress has the right to declare war? A. Yes, sir.

Q. You know that the President of the United States, even though he is Commander-in-Chief of the Army and Navy, can never use it against another nation until Congress declares war? A. Yes, sir; I do.

Q. Did you have any intention in writing any part of this pamphlet or the other exhibits in the case, in helping Germany in its war against the United States? A. I did not. I am always against German militarism and the militarism of the world.

Q. You wrote in People's Exhibit A, attached to the indictment: "In 1815, monarchy nations combined under the name of the Holy Alliance to

crush the French Revolution. Now, militarism and capitalism combined, though not openly, to crush the Russian Revolution." Did you intend that as a comparison between the present invasion and intervention in Russia, and the same thing in the year 1815? A. Yes; I did.

Q. What was your intention in writing the paragraph I just read, starting with: "In 1815, monarchy nations," etc. You might hold this and I will hold another copy. What was your intention in writing that paragraph? A. First, I compared these two revolutions in 1815—my intentions were to prove that in 1815 the monarch nations combined to crush the revolution, which was the peoples and workers revolution, and now the capitalistic nations, which are the monarch nations of the present age, combined to crush the Workers Republic of Russia, and I appealed to the workers of America, for the Soviet Government of Russia is a government by the people, and that is why I appealed to the workers of America.

Q. When you say the workers of America, or the workers of the world, what classes, and describe a few typical classes. Did you include any workers? A. I included in workers, everyone that does something for the community, something useful for the community or society. Everyone that does not do anything which is absolutely for the good of the community or society, is not a worker, which we call parasites, nothing else.

Q. When you say, "Know you people of America that a frank enemy is always preferable to a concealed friend," were you referring to the fact—what were you referring to? What was your intention in saying that? A. I was referring to the President Wilson not announcing—being friendly and speaking friendly to the people, and not an-

nouncing to the people of America about intervention in Russia. No one knew about intervention in Russia before news came that the troops were there already. Therefore, I say, a concealed friend is always preferable—that is a frank enemy is always preferable to a concealed friend.

Q. And that was what you intended in more detail in the third paragraph, beginning, "The President was afraid to announce to the American people the intervention in Russia." That was bringing out in detail your original statement? A. Yes, sir.

Q. Then you say, "This is not new. The tyrants of the world fight each other until they see a common enemy. As soon as they find a common enemy, they combine to crush it." What was your intention in saying that? A. My intention was to say that one country fights another country for unjust territory, and as long as there is not a fear of revolution, or there is not a fear of the working class—as soon as I show the French Revolution, whenever they see the working class which will oppose it to the interest of that clique, then they all combine to crush it. They try to keep the workers in poverty and starvation, in order to keep up heaps of money and wealth.

Q. You explain in the next paragraph, starting with: "In 1815" about the Holy Alliance, and then you say, "What have you to say about it?" Who was that addressed to? A. It was addressed to the people of America.

Q. What did you intend in saying that? What did you want them to say about it? What have they to say? A. I meant the people, the workers. What have they to say about capitalistic nations crushing the Soviet Government, which is the workers republic?

Q. "Will you allow the Russian Revolution to be crushed, you, yes, we mean you, the people of America." What did you mean by that? What did you want them to do? What did you intend by that? A. What I intend is that the workers of America should protest against intervention in Russia, which is capitalistic, and if the Court will allow me, I will read—there was a report in the *New York Times.*

The Court: We won't go into that.

Q. I will ask you just one more question on this pamphlet: "Yes, friends, there is only one enemy of the workers of the world, and that is capitalism." You did not intend by that to interfere in the war between Germany and the United States, did you? A. No; by capitalism I mean the private individuals which own the machinery, and by that machinery they exploit the workers everywhere. It is not only in this country, but in every country, and it is capitalism that causes part of the misery and starvation, and it is against the capitalism that I always protest, and I did protest in this leaflet.

Q. You are a Socialist, are you not? A. Yes, sir.

Q. Your postscript, "It is absurd to call us pro-Germans." Are you pro-German? Did you intend this leaflet to help Germany in any way? A. I did not. I am not a pro-German.

Q. "We hate and despise German militarism." Do you hate and despise German militarism and all militarism? A. Yes.

Q. You say, "We have more reason for denouncing German militarism than has the coward of the White House." When you say "we" did you intend the workers of the world?

Mr. Ryan: Hold on. I object to his asking the witness——

Q. What did you intend. Tell it to us? A. We have more business to denounce German militarism than has the coward in the White House. I meant we, the radicals of the world, have always opposed militarism, whether it is in Germany or any other country. Why, the rulers of the world are always good friends. As a matter of fact, Roosevelt in 1913, kissed with the Kaiser of Germany. We radicals of the world, it don't make any difference what philosophy we believe in, will never kiss with the Kaiser or any other rulers. That is what I meant.

Q. I have one more question of this witness, and may I finish that question and see whether it is relevant on the question of intent? My question is, how is it that he, a Socialist, joined with some anarchist in getting out these kind of pamphlets, and what was his intention? A. My intention was that, regarding the intervention in Russia, all radicals should protest against it, and I was working to protest against intervention in Russia.

By the Court.

Q. Who of these defendants had anything to do that you know of with the giving out of these leaflets or knew anything about them? A. Molly Steimer, Abrams, but Lachowsky—those are the only ones I know had anything to do with the leaflets.

Cross-examination by Mr. Ryan.

Q. Mr. Lipman, when you were examined by Captain Tunney at Police Headquarters, did you tell the truth? A. If I told the truth?

Q. In answer to the questions? A. I told him what I wanted to. I didn't want to tell him the truth.

Q. You did not want to tell him the truth? A. No; I did not.

Q. Then you only tell the truth when you want to tell the truth? A. Oh, surely.

Q. That is your doctrine? A. Not the doctrine.

Q. Mr. Lipman, I show you Government's Exhibit No. 11, and ask you if you wrote that and all that? A. Yes, sir; I did.

Q. I believe you so testified to your counsel? A. Yes, sir; I did.

Q. I read from this pamphlet, Government's Exhibit 11, the last sentence: "Know you, lovers of freedom, that in order to save the Russian Revolution we must keep the armies of the Allied countries busy at home." Did you write that? A. I did.

Q. Mr. Lipman, when you were apprehended at 103rd Street and Lexington Avenue, on August 23rd, 1918, what name did you give to Sergeant Hastings, the arresting officer? A. I don't remember exactly what name I gave then. I gave the name in the police station as it is now.

Q. What name did you give there? A. I don't remember that.

By the Court.

Q. What name did you give, if you remember? A. I don't remember exactly what name I gave; my name is Samuel Lipman, and I gave so in the police station.

Q. At the time you were first apprehended, what name did you give? A. I don't remember exactly what name I gave there.

The Court: Have you any information, Mr. Ryan, as to what name he then gave?

Mr. Ryan: I have.

The Court: Well, ask him if he gave that name.

By Mr. Ryan.

Q. Did you give the name of Louis Levin when you were arrested? A. I don't remember exactly what name I gave.

Q. Will you swear that you did not give that name? A. I never swore in my life.

Q. Will you affirm you did not give that name? A. I don't remember what I said.

Q. You might have given it, might you? A. May and may not; I said I don't remember.

Q. Do you remember or do you know whether you gave your right name? A. I don't.

By the Court.

Q. Do you remember that, whether you gave your right name when you were first apprehended? A. I was at a police station—I gave my name.

Q. I know you said that, but before your trip to the police station you remember what name you gave? A. When I was first asked my name I don't know whether they asked me or not. They grabbed me—two of them—and they brought me to the police station. I don't know if I was asked my name or not.

Q. I did not intend all that. You are an intelligent witness. When you were first apprehended do you know what name you gave to the receiving officer? A. I don't remember whether they asked me for a name or what I gave them, but at the police station——

Q. I know; you have said that over and over again. I am not going to the police station. I am asking you at the time you were first arrested what name you gave the officers, then and there—not at the police station, but then and there. Do you re-

member what name you gave? A. I don't remember whether I was asked.

Q. Don't remember whether you gave them any or not? A. No; I don't.

By Mr. Ryan.

Q. Were you not asked?

The Court: I think he has answered. It might not be satisfactory to you or counsel on the other side, but that is his answer.

Q. Were you asked by the apprehending officer, Sergeant Hastings, for your registration card?

Mr. Weinberger: I object on the ground that it is irrelevant, incompetent and immaterial.

The Court: I do not believe we will go into that, Mr. Ryan.

Mr. Ryan: I want to refresh his memory as to what name he gave. He said right here that he did not know whether he was asked about his name.

The Court: Yes; I know, he sticks to that.

Mr. Ryan: I thought I could refresh his memory.

The Court: Well, you failed to do it.

Mr. Ryan: If your Honor please, this is a preliminary question to the next question I intend to ask him.

The Court: What is the next question?

Mr. Ryan: The next is, what name did you give?

By the Court.

Q. What name did you give?

Mr. Ryan: He has not answered the first.

Q. What name did you give as being your name? A. My name is Samuel Lipman, and I don't remember what name I gave, or whether I was asked for any name.

The Court: Now, he has answered that. Now, whether it is satisfactory to you or to Mr. Weinberger or the jury, I have nothing to do with that.

By Mr. Ryan.

Q. Mr. Lipman, what is your trade or occupation? A. I am a furrier.

Q. Where do you work? A. Worked last time—I didn't work for a long time. In Tombs now, but last time I worked for Lubin & Feldman.

Q. What was your salary per week? A. I worked for $25, I received last before I was arrested.

Q. $25 a week? A. Yes, sir.

Q. What did you work at in Russia, before you came to this country? A. I didn't work in Russia.

Q. How old were you when you came to this country? A. Sixteen.

By the Court.

Q. How long have you lived in this country? A. I lived five years. I came here August 18, 1913.

Q. You lived here five years? A. Yes, sir.

Q. Are you a citizen? A. No; I am not.

By Mr. Ryan.

Q. Mr. Lipman, did you intend when you wrote the leaflet, the printed pamphlet, to have it distributed in the City of New York? A. Which one are you referring to?

Q. The one you wrote—you said you wrote it in English? A. Yes.

Q. Do you know how many copies of that pamphlet were printed? A. No; I don't.

By the Court.

Q. About how many? A. I don't know, because I had nothing to do with the technical side.

Q. We know you did not do the printing, but according to your best information, were there a thousand of them printed, or 10,000? A. I was never interested to ask.

Q. Do you know how many were distributed? A. I don't know.

Q. Do you know that a great many of them were distributed? A. I don't know. I did not take part in this work.

Mr. Weinberger: Mr. Abrams said in his examination that he printed 5,000 and distributed 5,000. We admitted that on the record.

By the Court.

Q. When you were talking to the detectives at Police Headquarters, did you tell them the truth, or did you lie to them? A. I answered all of the questions I wanted to answer, and those I did not want to, I did not answer.

Q. Did you answer the truth always? A. The questions that I answered were the truth, which I wanted to answer.

Q. You told the truth when you wanted to, and when you did not want to you did not; was that it? A. Yes.

By Mr. Weinberger.

Q. That is in relation to the detectives, but it has no relation to your testimony here?

Mr. Ryan: I object to that, your Honor.

The Court: We will let the witness answer that, and don't put words into his mouth.

Mr. Weinberger: I am speaking for a definite, specific thing. Will you answer that?

Mr. Ryan: I object to it.

The Court: He has been definite enough, I think.

Q. You admit here that you wrote the English pamphlet and wrote the People's Exhibit 11? A. Yes, sir.

Q. And you knew that it was to be printed and distributed to the people? A. Yes, sir.

Q. And you intended it to reach the people? A. Yes, sir.

Q. And you are not attempting to get out of any responsibility for it yourself? A. No, sir.

MOLLY STEIMER, one of the defendants, called as a witness in her own behalf, being first duly affirmed, testified as follows:

Direct examination by Mr. Weinberger.

Q. Miss Steimer, where were you born? A. In Russia.

Q. When did you come to this country? A. In 1913, on the 4th of March.

Q. How old were you when you came to this country? A. I was born in 1897.

Q. Were you educated in Russia? A. Yes, sir.

Q. When did you first participate in any workers' movement? A. It was in 1914, when the use-

less slaughtering first started in Europe, that I realized how the workers of the world were used as mere tools in the aim of capitalism.

Mr. Miller: I object to that statement of what she realized. The question was when. She is starting to make a speech at the present time.

The Court: Her theories, you know, are not evidence in this case. I think we can shorten it by letting it go at that.

Mr. Miller: It is immaterial, your Honor.

Mr. Weinberger: This witness will only take fifteen or twenty minutes.

The Witness: I then realized that the workers were either exploited in the mines, mills and factories or places where it is in the interest of bankers, manufacturers and exploiters, and when they act anything against those exploiters and rulers of another nation, they are the government who work in harmony with capitalism to declare war against the other nations. The Government enacted laws by which they force the workers to become professional murderers and murder the workers of the other nations. Since then I started to participate in the movement—that is, work for the cause of the workers; work for such a system where tyranny and despotism shall be abolished.

Q. Are you opposed to intervention in Russia? A. I am.

Q. Do you agree with the principles of the Bolsheviks? A. Yes, sir, I do, because they abolished private ownership, industrial capital——

Mr. Miller: I object to that.

The Court: Don't go into your reasons. Mr. Weinberger, please keep that out. Let her testify along the lines whether she intended to violate the statute or not, and let us not wander off away into some of her notions of social philosophy. Let us keep away from that.

The Witness: Just a moment. May I state to the District Attorney that it does not matter to me when they will ask the jury to find us guilty, nor does it matter to me when these jurors will impose upon me the most severe sentence, but let me express my thoughts.

By Mr. Weinberger.

Q. I will ask you first, did you participate in the issuing and circulating of People's Exhibits A and B, attached to the indictment, first the Yiddish pamphlet, second, the pamphlet entitled, "The Hypocrisy of the United States and her Allies." Did you participate in that? A. I did participate in the issuing and circulating of both the English and the Yiddish circular.

Q. Where did you give them out? A. In various places.

Q. What places were they? A. I don't think it necessary to mention the places.

Q. Tell us in what places you gave them out? A. Mr. Weinberger, I don't think it necessary. I do admit I circulated them in so many places that I could reach, and that it is the best place to throw down these circulars. I did that in the places where the most workers were. I said that I delivered it in places where the most workers were working. I have been trying to reach masses of people, and

it does not matter where or in what places I did that.

Q. Now, what was your intention in giving these leaflets out? A. To call the attention of the workers to the fact that international capitalism seeks to crush the Russian Revolution; that the Allies were acting just as tyrannic, just as cruel as the Germans, by invading a neutral country and assailing those workers who were defending the revolutionary freedom. I called on the workers to raise their voice of protest against such a despotic action.

Q. You did not have any intention to uphold German militarism against the United States? A. Not at all.

Q. You are not in favor of German militarism? A. I despise militarism throughout the entire world, for it is an unnecessary evil.

Q. You read the speeches and the statements of President Wilson before you issued these pamphlets in reference to Russia? A. I did.

Q. What was your intent in reference to making public opinion on the question of intervention in Russia? A. To show the hypocrisy of the Government of the United States and the Allies, those who claimed that they were fighting for democracy; those who called themselves staunch sticklers for the right of self-national determination, and at the very same time interfere with the situation in Russia, and sought to crush the Russian Revolution and abolish the present government that the Russian workers established, and seek to establish such a government that will uphold this system; aim to show the workers that they ought to protest against such action—protest against the action of the Allies and the United States of sending military troops to Russia.

Q. You read these pamphlets, of course, before you issued them or before you distributed them? A. Certainly I did.

Q. And you say here, "Will you allow the Russian Revolution to be crushed, you, yes, we mean you, the people of America." What did you intend the people of America to do to prevent the Russian Revolution from being crushed? A. To raise their voice of protest in any form.

Q. You say that "The Russian Revolution calls to the workers of the world for help." What kind of help did you intend the workers of the world to give the Russian Revolution? A. To bring about the international social revolution.

Q. You say, "Yes, friends, there is only one enemy of the workers of the world, and that is capitalism." What did you intend to convey by that? A. By that I mean, as I pointed out before, that all governments are working in harmony with the exploiters of the workers, and when they see that the workers are seeking to abolish tyranny, and establish a better system there the governments and exploiters are united together of all the nations to crush the revolutionary movement, no matter where this movement be. I firmly say it is my belief, though the Government of the Allies say that they seek to crush militarism in Germany, if Bolshevikism should prevail in Germany, the governments of the Allies would seek to suppress the German revolutionary movement just as they do it in Russia.

Q. You end up and say, "It is a crime for workers of America, workers of Germany, workers of Japan, and so forth, to fight the Republic of Russia." What meaning did you intend to convey by that, and why did you call it Workers Republic of Russia? A. Because the Russian workers select at

present such representatives who have been elected by those who produce only.

Q. Tell us what you believed was the condition in Russia. A. I believe that those who now represent the Russian people have been elected by those who produce only, and no parasites, and by that I mean those who do not produce, but lived until now on the product of others. Those are not represented in the Bolshevik government, and, therefore, I do uphold the Bolshevik movement.

Cross-examination by Mr. Miller.

Q. Are you an anarchist? A. Yes; I am. By anarchism, I understand a new social order, where no group of people shall be in power, or no group of people shall be governed by another group of people. Individual freedom shall prevail in the full sense of the word. Private ownership shall be abolished. Every person shall have an equal opportunity to develop himself well, both mentally and physically. We shall not have to struggle for our daily existence, as we do now. No one shall live on the product of others. Every person shall produce as much as he can, and enjoy as much as he needs—receive according to his needs. Instead of striving to get money, we shall strive towards education, towards knowledge. While at present the people of the world are divided into various groups, calling themselves nations, while one nation defies another—in most of the cases considers the other as a competitor, we, the workers of the world, shall stretch out our hands toward each other with brotherly love. To the fulfilment of this idea I shall devote all of my energy, and, if necessary, to render my life for it.

By the Court.

Q. This law under which this indictment is found, do you believe in that law? A. No; I don't believe in such laws.

Q. And you do not believe that law should be enforced, do you? A. No, I do not.

Q. And you are trying to defeat that law? A. I am.

Q. Do you believe in any laws of human government? A. I believe that the people ought not to kill each other.

Q. Who is going to make the law saying they shan't kill each other? A. If circumstances were better than they were to-day—if every person, as I pointed out before, should be well developed mentally; if they should be able to enjoy life; he would not be bad, and these deeds which are committed to-day would not be committed. We would not need any laws to punish, and we would not need any courts.

By Mr. Miller.

Q. But at the present time we need some laws? A. Because the system is rotten.

By the Court.

Q. We need some laws, but you don't think we need this law of Congress we are now trying you on? A. I do not believe in any of these laws which are in existence to-day.

By Mr. Miller.

Q. Did you know about the Espionage Law in August? A. I did.

Q. Did you know it at the time that you circulated these pamphlets? A. I did know about it when it has been passed. I certainly knew about it when I circulated them.

Q. Are you in any business? A. No.

Q. Do you receive a salary for doing any work? A. I work in a factory.

Q. How much did you get a week? A. Lately I got $15 a week.

Q. How long have you been an anarchist? A. If there ever was a type——

Q. Just how long have you been an anarchist? A. I will not answer unless you will allow me to express myself.

The Court: Let us have it out—come right out with it.

The Witness: If there ever was a doubt in me as to whether people ought to be governed by one another, that doubt has vanished since I came in contact with those who rule.

Q. I read you from the Yiddish translation of the Yiddish pamphlet here: "Workers, our reply to the barbaric intervention has to be a general strike." A. I certainly prefer that it is my wish that the workers of the world shall organize themselves against the tyrannical action of the belligerents of the world by sending military forces to Russia. A general strike is one of the actions I would prefer.

Q. A general strike is what you intended by these words; is that right? A. Yes.

Q. "Workers in the ammunition factory, you are producing bullets, bayonets, cannons, to murder, not only the Germans, but your dearest best who

are in Russia." Did you include the workers in the ammunition factories in your general word "workers" here? A. Yes.

Redirect examination by Mr. Weinberger.

Q. When you say "general strike," what do you mean by the words "general strike"? A. That the workers of the world, or when we speak to the workers of the United States at least, in this country, should stop producing any or all necessary means of life, and by this we would force the Government to stop the sending of the military forces to Russia.

Q. And the only purpose of a general strike that you were interested in, and intend to cover by this leaflet, was to prevent intervention in Russia? A. Yes.

Q. You did not in any way intend by general strike or any other words to interfere in the war against Germany on the part of the United States? A. The war between Germany and the United States does not concern me, because I wish to see militarism throughout the entire world crushed by the workers.

Q. You did not intend by these pamphlets in any way to go into that question at all? A. I did not think about it.

Recross-examination by Mr. Miller.

Q. Just one more question. When you called on the ammunition makers to strike, did you intend by that that they should cease from manufacturing bullets, shells, etc., with the intent that the United States might be hindered in this war with Germany? A. I thought, and I do think it now,

that the workers of the United States who are working in munition factories ought to stop producing munitions which is used for the killing of Russians. I cared nothing about interfering with the war with Germany, because it does not matter to me. I care very little about the war which the United States wages against Germany.

Q. If all of these munition workers stopped making munitions, do you think that would hinder the United States in the war with Germany? A. It did not matter to me.

By Mr. Weinberger.

Q. Russia is a big, important thing to you, and to save Russia was your only intention in giving out the pamphlets? A. Yes, sir.

HYMAN LACHOWSKY, one of the defendants, called as a witness in his own behalf, being first duly affirmed, testified as follows:

Direct examination by Mr. Weinberger.

Q. Give your name to the stenographer. Where were you born? A. Russia.

Q. When did you come to America? A. In 1908.

Q. Did you have anything to do with the distribution and printing of the pamphlets? A. Yes; I printed them.

Q. With Abrams? A. Yes, Abrams and Schwartz and Lipman.

Q. Who did the distribution of those pamphlets? A. Molly Steimer.

Q. The defendant Molly Steimer, you said? A. Yes.

By the Court.

Q. The defendant Steimer, with Abrams, you and Schwartz? A. Yes.

Q. Who wrote it? A. I think one Schwartz wrote and the other one Lipman.

By Mr. Weinberger.

Q. You are opposed to intervention in Russia? A. Yes.

Q. And the purpose of giving out the pamphlets was only to protest on that score? A. Yes.

Q. You are not in favor of German militarism? A. Certainly not.

Q. Or German victory? A. No.

Q. You have no intention to hinder the United States in its war with Germany? A. No.

Cross-examination by Mr. Ryan.

Q. Mr. Lachowsky, how long have you been in this country? A. About ten years.

Q. Where did you work? A. Bookbinding.

Q. How much did you get per week? A. Eighteen or twenty dollars.

By the Court.

Q. Have you ever been naturalized in this country? A. No.

Q. Never taken out any first papers, have you? A. Never.

Q. Are you an anarchist? A. Yes, sir.

By Mr. Ryan.

Q. Where did you get the pamphlets which you had in your possession on the night of August 23rd, 1918, about 7 o'clock, at the corner of Madison Ave-

nue and 104th Street? A. I printed them myself. I took them from the printer.

Q. From the printer? A. Yes, sir.

Q. By the printer, do you refer to the defendant Abrams? A. I was printing them myself. I was working machinery.

Q. At 1582 Madison Avenue? A. Yes, sir.

Q. You worked in that shop with the defendant Abrams? A. Not always, but I stopped that day, and I came in and helped to print these leaflets.

Q. What time did you work in that shop? A. I think it was Thursday—the day before I was arrested—from 2 until 4 o'clock.

Q. Did you ever work in that shop at night? A. Never.

Q. You heard the witness, Mrs. Kraus, here, did you not? A. Yes.

Q. Who else worked in that shop besides you and Abrams? A. Abrams and Schwartz.

Q. What did you do with the pamphlets, after they were printed in the shop, 1582 Madison Avenue? A. I was going to distribute them.

Q. I mean the 5000, other than the two packages that you had on your person on the night of August 23rd, 1918? A. This is the first two packages I took and distributed.

Q. One of which you gave to Rosansky that night? A. Yes; this one was one and the one I had.

Q. When did you first meet Rosansky? A. I think I met two days before.

Q. Ever see him before that? A. Oh, yes; I have seen him last year. I have seen him at meetings.

Q. You know him, then? A. Yes; I know him.

Q. You have read both the pamphlet printed in Yiddish and the pamphlet printed in English? A. Yes.

Q. Do you believe in the sentiments contained in both of those pamphlets? A. Yes.

Q. What were you going to do with that bunch of pamphlets you had under your arm, on the night of August 23rd, 1918, at 104th Street and Madison Avenue, New York City? A. I was going to distribute them.

Q. Where? A. In a meeting at, I think, 67th Street. I read the advertisement in the newspaper. I am going to distribute them at that meeting.

Q. At a meeting at 67th Street and Third Avenue? A. I don't know exactly where it is, because I wasn't there yet.

Q. Was that the meeting at Central Opera House, 67th Street and Third Avenue? A. Yes, sir.

Q. And you intended to distribute those pamphlets there? A. I was going to distribute them.

DEFENDANTS REST.

Mr. Weinberger: I now renew all my motions to dismiss, on the ground that the Espionage Law is unconstitutional. On the further ground, that the Espionage Law is too indefinite, and, therefore, does not advise the people as to exactly what is permitted.

On the further ground, I ask for a direction of a verdict, on the ground that there is absolutely no evidence of a conspiracy or violation of any law of the United States, especially the Espionage Law.

The Court: Overruled.

Mr. Weinberger: I also ask a dismissal, on the ground that there is absolutely no evidence of the fact that the United States is at war, or was at war with Russia, at any time while these pamphlets were being given out by the defendants.

The Court: I overrule that motion.

New York, October 23rd, 1918.

Trial resumed pursuant to adjournment.

Present:

The Court, Counsel and Jury, same as before.

(Mr. Weinberger summed up the case to the jury on behalf of the defendants.)

(Mr. Miller summed up the case to the jury on behalf of the Government.)

Charge of the Court.

HENRY D. CLAYTON, *J.*:

The Court: Gentlemen of the jury: In the case which is now before you for consideration, the defendants, Gabriel Prober, Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Molly Steimer, alias Molly Stimer, alias Molly Stiner, alias Mollie Stein, are charged by the Government in an indictment containing four counts with conspiracy to violate Section 3, Title I, of the Act of Congress approved June 15, 1917, as amended by the Act approved May 16, 1918. This Act is known as the Espionage Act.

Now, in order to understand just what is charged, I will read you the provisions of the Espionage Act under which the indictment is framed.

Section 3, Title I, of the Act of June 15, 1917, as amended by the Act of May 16, 1918, provides, among other things, as follows:

"Whoever when the United States is at war, shall wilfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, * * *, or any language intended to bring the form of the government of the United States, * * * into contempt, scorn, contumely or disrepute, or shall wilfully utter, print, write or publish any language intended to incite, provoke or encourage resistance to the United States, * * *, or shall wilfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of anything or things, product or products, necessary or essential to the prosecution of the war in which the United States may be engaged, with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, * * *, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both. * * *."

It is with the question of guilt or innocence that you have to deal, gentlemen of the jury. The matter of the punishment is a matter that belongs to the Court.

Section 4, Title 1, of the Act of June 15, 1917, provides as follows:

"If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be pun-

ished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy."

In other words, Section 4 provides the same penalty for conspiracy to violate the act as Section 3 as amended provides for the substantive violation of the act, namely, a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.

The indictment contains four counts.

The first count charges the defendants with conspiracy to violate the first provision of Section 3, Title I, of the Espionage Act above set forth in that, the "defendants unlawfully and wilfully did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, * * * unlawfully and wilfully, to utter, print, write and publish disloyal, scurrilous and abusive language about the form of government of the United States, * * *."

The second count charges the defendants with conspiracy to violate the second provision of Section 3, Title I, of the Espionage Act above set forth in that the "defendants unlawfully and wilfully did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown * * * unlawfully and wilfully, to utter, print, write and publish language intended to bring the form of government of the United States into contempt, scorn, contumely and disrepute. * * *."

The third count charges the defendants with conspiracy to violate the third provision of Section 3, Title I, of the Espionage Act above set forth, in that the "defendants unlawfully and wilfully did conspire together and agree among themselves and

with divers other persons whose names are to the Grand Jurors unknown, * * *, unlawfully and wilfully, to utter, print, write and publish language intended to incite, provoke and encourage resistance to the United States in said war with the Imperial German Government, * * *."

The fourth count charges the defendants with conspiracy to violate the fourth provision of Section 3, Title I, of the Espionage Act above set forth in that the "defendants unlawfully and wilfully did conspire together and agree among themselves and with divers other persons whose names are to the Grand Jurors unknown, * * *, unlawfully and wilfully by utterance, writing, printing and publication, to urge, incite and advocate curtailment of production of things and products, to wit, ordnance and ammunition, necessary and essential to the prosecution of the war in which the United States now is, and from April 6, 1917, to the date of presentation and filing of this indictment, continuously has been engaged, to wit, said war with the Imperial German Government, with intent by such curtailment to cripple and hinder the United States in the prosecution of said war; * * *."

It is alleged in each of four counts that the conspiracy was planned between July 1, 1918, and August 24, 1918, in the Southern District of New York while the United States was at war with the Imperial German Government, and that it was part of the conspiracy that the defendants would attempt to effectuate and accomplish their wilful, unlawful and felonious designs and purposes through and by means of uttering, printing, writing and publishing, in the City, County and Southern District of New York, and circulating and distributing in the same place among persons whose names are to the

Grand Jurors unknown, copies of certain circulars, one of which was printed in English and the other in Yiddish. Copies of these circulars and a translation of the one printed in Yiddish are annexed to the complaint and made parts thereof.

In each count the same certain overt acts are alleged.

A count, gentlemen, is a statement or a charge of an offense or a crime and an indictment may charge different crimes or different offenses or the same offense may be charged in different counts in different ways. Each count is just like an indictment itself and an indictment containing four counts, as this one does, may well be likened to four separate indictments all embraced in one paper.

The fact that the defendants have been indicted and placed on trial should not be taken against them.

The fact that the Court has refused to dismiss the indictment or direct a verdict in favor of the defendants should not be taken against them.

The fact that the Court has denied any motions or overruled any objections or refused to admit evidence offered on behalf of the defendants should not be taken against them.

Furthermore, you are to understand that any reference or comment or expression of opinion which the Court may have made or hereafter may make in respect to the evidence or any part thereof or in respect to the contentions of the respective parties, is not evidence nor to be understood as expressing my own opinion or personal belief in either the guilt or innocence of the defendants.

It is your function and yours alone to determine their guilt or innocence from the evidence and that alone, directed by the rules of law which I will advise you are applicable to the case. It follows also

that any comment or statement of counsel is not evidence in this case.

The defendants are presumed to be innocent until their guilt has been established by the evidence, beyond a reasonable doubt.

The burden is upon the Government to establish, beyond a reasonable doubt, the material facts charged in the indictment, and unless the Government has met this duty and established the defendants' guilt by the evidence beyond a reasonable doubt, the defendants are entitled to an acquittal.

By the phrase "reasonable doubt," you are to understand that the doubt, to be reasonable, must have something to stand upon. It must be a substantial doubt, arising from the evidence or lack of evidence, such as an honest, sensible, fair-minded man might with reason entertain, consistent with a conscientious desire on his part to ascertain the truth. A reasonable doubt is what the word implies: a doubt found in reason, a doubt for which you can give a reason. It is not a mere vague conjecture, or a flimsy, fanciful, fictitious doubt which you could raise perhaps about anything or everything. It is simply a reasonable doubt.

If, after a fair and careful consideration of all of the evidence, you have not an abiding and conscientious conviction of the defendants' guilt, then you can not be said to be convinced beyond a reasonable doubt.

It is the duty of the Court, gentlemen of the jury, to pass upon the admissibility of the testimony, but the weight to be given the evidence of the witnesses is for the consideration and determination of the jury. You will give the testimony of the witnesses such weight as, in your judgment—your just and fair judgment—it is entitled to receive, considering the appearance of the witnesses on the stand, their

candor or lack of candor, their feelings or bias, if any; their interest in the result of the trial, if they have any interest; their means of information, and the reasonableness of what they have said in their testimony, and it is for you, as fair-minded and conscientious men under your oaths, to believe as much or as little of the testimony as you think you should believe.

The Court instructs you gentlemen that the defendants are competent witnesses in their own behalf, and that you have no right to captiously or capriciously disregard their testimony, nor have you the right to disregard their testimony merely because they are the defendants, but you are to treat their testimony in this case in the same way as the testimony of the other witnesses, and subject it to the same tests you would apply to other witnesses in the case; and you may remember, in considering their testimony, that they are the defendants and interested in the result of your verdict.

The word "wilfully," as used in the statute which I have quoted to you, means "willingly," "purposely," "intentionally," as contra-distinguished from "accidentally" or "inadvertently."

Congress did not intend, by the passage of this Act, that a citizen should not faultily say something that, upon second thought, he perhaps would agree he should not have said, and, therefore, he did not say it wilfully. Perhaps he would regret that he had said it, and it did not intend to hold a man criminally liable for such utterances, as where a man, without thought, accidently, unintentionally, without any premeditation, without any desire, should have said something that he might have afterwards regretted; it did not intend that he should be indicted for that, so it put in the word "wilfully."

Now "wilfully" means by the exercise of the will, and you, as common sense men, I think will quite understand the purpose and meaning of that qualifying word "wilfully." As I have said, it contradistinguishes a wilful utterance from a mere accidental or inadvertent utterance.

The word "unlawfully" as used in the statute, means contrary to or in violation of law.

The word "feloniously," as used in the indictment, means a deliberate intent to do a wrongful act, and an act forbidden by law.

The word "knowingly," as used in the indictment, means with the knowledge that he knew he was using the language, that he fully realized that he was using that language.

The defendants have been indicted, as I have said, for conspiring to do certain unlawful acts, and these charges are set forth in the indictment. A conspiracy is an agreement, combination or confederation between two or more persons to do an unlawful thing, or a lawful thing in an unlawful manner. A person may enter into an unlawful conspiracy without using any expressed words, for the law has in view the substance, not the shadow, and the substantive thing that the law forbids is a conspiracy; not the mere manner of its formation, not the mere vehicle or expression that may contain it, but the substantive thing that the law denounces is a conspiracy itself.

Now, one person can not conspire with himself. Conspiracy implies more than one party to the conspiracy, for there must be a combination or a confederation between two or more persons. The conspiracy is formed when once there is an agreement, whatever its form may be, reached between two or more individuals to accomplish the unlawful purpose. There is needed only one thing to make the

offense complete and to constitute it a crime, and that is an overt act in pursuance of or following the conspiracy.

An overt act means a step taken, however great the step may be or however slight it may be, to carry out the object of the conspiracy. The act of one of the conspirators, after the agreement is reached and the common purpose is understood between the conspirators, binds all the others; that is, the others are responsible for the acts of each one of the conspirators, done in furtherance of the conspiracy, if the act done by one or more is for the purpose of carrying out the purpose of the conspiracy.

It is not necessary for the Government to show that the conspiracy originated with all of the defendants at the same time, for a person may enter into a conspiracy already or previously formed, and, if he joins a conspiracy already or previously formed, he is equally guilty and is deemed to be a party to all of the acts performed by the other conspirators, if such acts are done to effect the objects of the conspiracy.

If you find that there was a conspiracy to violate this substantive law to do these things, which the Act of Congress to which I have referred said that no one must do or shall do while the United States is at war—if you find it established by the evidence, beyond a reasonable doubt, that these defendants did enter into such a conspiracy to violate this substantive law, then you will consider whether any one or more of the different overt acts alleged in the indictment were done by one or more of the defendants to effect the object of the conspiracy, and, if you find that such an overt act was done, and find that beyond a reasonable doubt from the evidence, the crime in this case is complete.

Conspiracies, gentlemen of the jury, are usually secret and difficult to discover. The law is that it is not necessary to prove by direct evidence that the defendants came together and agreed, combined or confederated to commit the crime. A conspiracy can be proved by evidence or proof of facts from which you can fairly and reasonably infer that the defendants had a common object, or by the proof of facts from which you can fairly and reasonably infer that the acts of each defendant were done in pursuance of a common purpose, calculated to effect that common purpose, although such acts may be different in character. It should be made to appear that the defendants steadily pursued the same object, whether acting separately or together, by common or different means, all leading to the same result. Concurrence of action or the material points may be sufficient to enable you to presume concurrence of sentiment and intention, and from this you can very safely find—I leave that to your fair judgment—the fact that the conspiracy existed. If you find that the defendants pursued the same object, either in the same way or in different ways, one of them performing one or more acts in the transaction, and others performing other acts so as to complete the transaction, with the intention of accomplishing the object which they were pursuing, you can very safely draw the conclusion that they had engaged in a conspiracy to effect that object. That is in this case, gentlemen, and I will not give you all the details.

Perhaps it would be improper, but to make clear what I mean by what I have just said, it may be that one or more of these defendants wrote the pamphlets set forth in the indictment. It may be that others printed them. It may be that others circulated them, and what I desired to tell you was

that if it was done in pursuance of the common purpose of the conspiracy to violate this law, the act of one of the conspirators is the act of all.

The act of printing, of one of the conspirators, is the act of all. The act of circulating it is the act of all, providing the evidence shows you that they did have the conspiracy and you believe that is established by the evidence beyond a reasonable doubt. Then the act of each one of them performed in pursuance of that conspiracy, if it was formed, became the act of all.

What the defendants' intentions were is a question for you to decide. The Court permitted the defendants to testify as to their intentions, but the fact that they testified one way as to their intentions is not necessarily conclusive upon you. You are to be the judges of their intentions, when you consider the conduct charged against them. You are the judges, and, when you come to judge of their testimony, as I have told you, you will bear in mind that they are defendants in this case and, necessarily, vitally interested in the result of your verdict. The question of what their intent was is for you to say, from all the evidence in this case, not disregarding any part of the testimony, not disregarding what the defendants themselves said; but you are, in considering the evidence, entitled to consider all of the circumstances; to consider when and how—if the evidence shows that these pamphlets were written—when and how the meetings were held by the defendants, if the evidence shows they had any meetings; when and how these pamphlets were printed, if the defendants printed them or had them printed; and when and how and the circumstances of their distribution and circulation; and, gentlemen of the jury, as fair-minded, sensible men, you take your common knowledge with you.

It is perhaps not amiss for me to say that men who are actuated by pure and lawful motives as a rule act in the open daylight. People who have circulars to distribute, and they intend no wrong, go up and down the streets circulating them. So it is proper for you to consider how these leaflets were printed and how they were circulated, as bearing upon the question of the intent that animated these defendants in the circulation of those leaflets. You are not to be mere automatons or dummies. You are put there in that jury box because you are believed to have in you certain cardinal virtues. You are put there because it is believed you are honest men, that you are conscientious men, that you are courageous men, that you will let your verdict speak the truth as you can best judge the testimony in this case. Honesty and courage and fairness, those are the cardinal virtues that you are supposed to possess, and you were put there for another reason: you were put there because you are men of common sense, possessed of ordinary out-of-doors sense, sense that people have on the street and elsewhere in judging of the conduct of men; sense that men had before Law books were written—out-of-doors sense. That is the reason why you are the best judges of the facts in this case, because you have these cardinal virtues and you have that good, common, out-of-doors sense.

The rule is that the person charged with any crime or offense is presumed to intend the natural and probable consequences of what he knowingly does. That is a presumption of fact that you take along with you, as one of the rules to guide you in the consideration of this case.

If you find that the defendants purposely and intentionally wrote, uttered, printed and published what they are charged to have written, uttered,

printed and published, in a wilful attempt to bring the form of the government of the United States into contempt, scorn, contumely and disrepute, or to encourage resistance to the United States, or to urge and advocate the curtailment of the production of ordnance and ammunition necessary and essential to the prosecution of the war, with intent by such curtailment to cripple and hinder the United States in the prosecution of the war, this would constitute criminal intention, notwithstanding you may also find that the motives of the defendants were to serve a certain faction in Russia in so doing, and the defendants were not conscious of doing anything unlawful, because they did not know the law.

Ignorance of the law excuses no one. A person charged with crime can not be heard to say that he did not know the law. The defendants are criminally responsible for what they knowingly or purposely did, and the want of understanding on their part that they were committing a crime, because they did not actually know the law, does not excuse them, for they are conclusively presumed to know the law and, as I have said, ignorance of the law excuses no one.

I think it not amiss to say here, gentlemen, that you will readily distinguish between a motive and an intent. A motive is that which leads a person to do a certain act. The intention is a design or plan or purpose to use a particular means to effect a certain definite result. Because I am hungry, I go past a bakery and, if I should see a loaf of bread there and I steal it, that may be a good motive to appease hunger, but my intention is to steal, to violate the law, and I would be guilty of the intention to violate the law, within the meaning of the law.

Now, gentlemen, in the consideration of this case you will consider the guilt or innocence of each defendant with respect to the charge made in each count.

Taking up the first count of the indictment, then you pass upon the guilt or innocence of each one of the defendants under that count, being guided by the rules as I have given them to you, and by the evidence as it has been adduced before you.

Then you pass to the consideration of the next count, and so on; and, in that same way, until you have considered the case of each defendant under each count, and then you are prepared to write your verdict, and, in the case of each count, you will say which of the defendants, if any of them, is guilty, and so on with respect to each count. Of course, if you find all the defendants guilty on each count in the indictment, why, your verdict would be that you find them guilty as charged in the four counts of the indictment.

Now, I think I have made that clear, and doubtless most of you have served on juries before, and you will know how to render your verdict; but should you, during your deliberations at any time, wish any further instructions from the Court, I will be very glad to give them to you.

(The jury retired.)

(The jury returned.)

(The jury was polled.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: How say you?

The Foreman: We find the defendant Gabriel Prober not guilty on any of the counts.

The Court: Is that the verdict of the jury? Poll each one. Gabriel Prober not guilty; is that your verdict? Call their names. I will poll the jury myself.

(The Court polled the jury and the defendant Gabriel Prober was found not guilty on any of the four counts. The defendants Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Molly Steimer were found guilty on all four counts.)

The Clerk: Gentlemen of the jury, you say you find the defendant Jacob Abrams guilty as charged?

The Foreman: Yes, sir.

The Clerk: The defendant Samuel Lipman guilty as charged?

The Foreman: Yes, sir.

The Clerk: The defendant Hyman Rosansky guilty as charged?

The Foreman: Yes, sir.

The Clerk: The defendant Hyman Lachowsky guilty as charged?

The Foreman: Yes, sir.

The Clerk: The defendant Molly Steimer guilty as charged?

The Foreman: Yes, sir.

The Court: And so say you all?

The Foreman: Yes, sir.

The Court: That is the verdict of the jury, Mr. Foreman?

The Foreman: Yes, sir.

The Court: You all say so?

The Foreman: Yes, sir.

The Court: Very well; that is the verdict.

Mr. Miller: Your Honor, I now move for judgment.

The Court: Let the jury pass out. Let everybody else remain seated, and, Mr. Marshal, you see

that the jury passes out in an orderly way. You move now for the judgment of the Court?

Mr. Miller: Yes, sir.

The Court: Upon the motion of the District Attorney and upon the judgment just rendered by the jury, after the Court has told the jury as to its verdict in respect to the guilt of each one of the defendants, the Court approves the verdict.

Accordingly, it is ordered and adjudged by the Court that the defendants Hyman Lachowsky, Hyman Rosansky, Molly Steimer, Jacob Abrams and Samuel Lipman are guiity.

That is the judgment of the Court, that they are guilty as found by the jury, of the charges in the indictment.

The Court will impose sentence upon these defendants at the hour of 10.30 o'clock in the morning on Friday of this week—day after to-morrow. It will then determine what the punishment shall be.

It is the judgment of the Court that upon the verdict of the jury the defendant Prober is not guilty, and he will go hence, and his bail will be discharged, if he had any bil.

Mr. Weinberger: May I make my motions?

The Court: You may.

Mr. Weinberger: I move to set aside the verdict of the jury as contrary to the weight of evidence and contrary to the law.

The Court: That motion is overruled.

Mr. Weinberger: And, further, on all of the grounds stated by me in my previous motion at the opening of the trial and at the end of the Government's case.

The Court: Is there any other business, Mr. District Attorney?

Mr. Ryan: No, sir.

The Court: Then the court will stand adjourned.

SENTENCE.

New York, October 25th, 1918.

The Court: Let Hyman Rosansky come around here. Hyman Rosansky, you stand convicted by the verdict of the jury and the judgment of the Court, of having violated the law, as charged in the indictment, and about which you were informed the way the indictment read, and you heard the verdict of the jury, and as I have said, it is the judgment of the Court that you are guilty as found by the jury on each of the counts, and that as punishment therefor you be—what, Mr. District Attorney, is your information as to prison?

The Court: It is the judgment of the Court that as punishment for the offense of which you stand convicted, and were adjudged guilty, you be confined on each count of the indictment, in the penitentiary of the State of Maryland for the term of three years under each count, and that under each count you be fined the sum of one thousand dollars ($1000). It is further the order and the judgment of the Court that the sentence under each count for imprisonment shall run concurrently, so that you will understand it means three years in prison and a thousand dollars fine.

Now, Jacob Abrams, it is the judgment of the Court that the verdict of the jury finding you guilty under the indictment in this case, be and is approved, that you are guilty as charged in each of the four counts of the indictment, and that for punishment therefor, you be fined under each count the sum of one thousand dollars ($1000) and as further punishment under each count, you be confined in the penitentiary of the State of Maryland for the period of twenty years. It is further the

judgment and order of the Court that the sentence imposed under each count, shall run concurrently, so that your sentence is twenty years in the penitentiary and a thousand dollars fine.

Defendant Jacob Abrams: Thank you.

The Court: Now, let the next one come around. Samuel Lipman. You, Samuel Lipman, having been found guilty under this indictment, by the verdict of the jury, it is the judgment of the Court that you are guilty on each of the four counts, and that as punishment therefor, in each of these counts, you be fined in the sum of one thousand dollars ($1000) and be confined in the penitentiary of the State of Maryland for the period of twenty years. It is the further order and judgment of the Court that the sentence imposed under the different counts shall run concurrently, so that your sentence is one thousand dollars and twenty years in the penitentiary.

Defendant Samuel Lipman: I did not expect anything better.

The Court: I do not think you deserve anything less. Now, the next one.

Hyman Lachowsky. The jury in this case found you guilty under each of the four counts of the indictment. It is the judgment of the Court that you are guilty, and that as punishment you be fined under each count of the indictment, the sum of one thousand dollars, and further imprisoned in the penitentiary of the State of Maryland for the period of twenty years. It is the further order of the Court that the punishment imposed under each count in the indictment shall run concurrently, so that your fine is a thousand dollars and the sentence is twenty years in the penitentiary.

Defendant Hyman Lachowsky: I expected it.

The Court: I am glad you expected it—glad to know that, at least, because you are not disappointed.

Now, Molly Steimer, in this case the jury found you guilty under each count of the indictment. It is therefore, the judgment of the Court that you are guilty, and that as punishment therefor, you be confined in the penitentiary—what is the name of it, Mr. Marshal?

The Marshal: Missouri State Penitentiary.

The Court (continuing)—Missouri State Penitentiary for Women, at Jefferson City, Missouri, for the period of fifteen years under each count of the indictment, and the sum of five hundred dollars ($500) under each count of the indictment. It is further the order of the Court that the sentence and the fine imposed under each count, shall run concurrently, so that your imprisonment is for fifteen years, and your fine is for five hundred dollars ($500).

Now, I believe that completes them, does it?

Mr. Ryan: If your Honor please, I ask that you direct the United States Attorney to send to the Department of Labor the record of this commitment, that it may be taken up with the Immigration Office——

The Court: Yes; very well. I do not know—it is not my business—it may be that if these people behave themselves—it may be that there may be Executive intervention at Washington, and then deportation following Executive intervention, but that will be another branch of the Government, and I apprehend it would be dependent largely upon the way they behave themselves.

Mr. Ryan: Will you direct the United States Attorney to send the record to the proper authority?

The Court: I do, and you may draw a specific order on that if you want to, and I will sign it.

EXHIBITS.

Government's Exhibit 1.

THE
HYPOCRISY
OF THE
UNITED STATES
AND HER ALLIES

"Our" President Wilson, with his beautiful phraseology, has hynotized the people of America to such an extent that they do not see his hypocrisy.

Know, you people of America, that a frank enemy is always preferable to a concealed friend. When we say the people of America, we do not mean the few Kaisers of America, we mean the "People of America." you people of America were deceived by the wonderful speeches of the masked President Wilson. His shameful, cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington and vicinity.

The President was afraid to announce to the American people the intervention in Russia. He is too much of a coward to come out openly and say: "We capitalistic nations cannot afford to have a proletarian republic in Russia." Instead, he uttered beautiful phrases about Russia, which, as you see, he did not mean, and secretly, cowardly, sent troops to crush the Russian Revolution. Do you see how German militarism combined with allied capitalism to crush the russian revolution?

This is not new. The tyrants of the world fight each other until they see a common enemy—WORKING CLASS—ENLIGHTENMENT as soon as they find a common enemy, they combine to crush it.

In 1815 monarchic nations combined under the name of the "Holy Alliance" to crush the French

Revolution. Now militarism and capitalism combined, though not openly, to crush the russian revolution.

What have you to say about it?

Will you allow the Russian Revolution to be crushed? YOU: Yes, we mean YOU the people of America!

THE RUSSIAN REVOLUTION CALLS TO THE WORKERS OF THE WORLD FOR HELP.

The Russian Revolution cries: "WORKERS OF THE WORLD! AWAKE! RISE! PUT DOWN YOUR ENEMY AND MINE!

Yes friends, there is only one enemy of the workers of the world and that is CAPITALISM.

It is a crime, that workers of America, workers of Germany, workers of Japan, etc., to fight THE WORKERS' REPUBLIC OF RUSSIA.

AWAKE! AWAKE, YOU
WORKERS OF THE WORLD!
REVOLUTIONISTS

P. S. It is absurd to call us pro-German. We hate and despise German militarism more than do your hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House.

Government's Exhibit 2.

Leaflet in Yiddish: translation as follows:

WORKERS—WAKE UP.

The preparatory work for Russia's emancipation is brought to an end by his Majesty, Mr. Wilson, and the rest of the gang; dogs of all colors!

America, together with the Allies, will march to Russia, not, "God Forbid", to interfere with the Russian affairs, but to help the Czecko-Slovaks in their struggle against the Bolsheviki.

Oh, ugly hypocrites; this time they shall not succeed in fooling the Russian emigrants and the friends of Russia in America. Too visible is their audacious move.

Workers, Russian emigrants, you who had the least belief in the honesty of our government, must now throw away all confidence, must spit in the face the false, hypocritic, military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of the war. With the money which you have loaned, or are going to loan them, they will make bullets not only for the Germans but also for the Workers Soviets of Russia. Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom.

You who emigrated from Russia, you who are friends of Russia, will you carry on your conscience in cold blood the shame spot as a helper to choke the Workers Soviets? Will you give your consent to the inquisitionary expedition to Russia? Will you be calm spectators to the fleecing blood from the hearts of the best sons of Russia?

America and her Allies have betrayed (the workers). Their robberish aims are clear to all men. The destruction of the Russian Revolution, that is the politics of the march to Russia.

Workers, our reply to the barbaric intervention has to be a general strike! An open challenge only will let the government know that not only the Russian Worker fights for freedom, but also here in America lives the spirit of revolution.

Do not let the government scare you with their wild punishment in prisons, hanging and shooting. We must not and will not betray the splendid fighters of Russia. Workers, up to fight.

Three hundred years had the Romanoff dynasty taught us how to fight. Let all rulers remember this, from the smallest to the biggest despot, that the hand of the revolution will not shiver in a fight.

Woe unto those who will be in the way of progress. Let solidarity live!

THE REBELS.

Government's Exhibit 3.

Same as Exhibit 1.

Government's Exhibit 4.

Same as Exhibit 2.

Government's Exhibit 5.

Package containing approximately 100 copies of Exhibit 2.

Government's Exhibit 6.

Package containing approximately 100 copies of Exhibit 2 and one copy of Exhibit 1.

Government's Exhibit 7.

Copy of *New York Tribune* of August 23, 1918, containing account of distribution of Exhibits 1 and 2.

Government's Exhibit 8.

A package containing approximately 150 copies of Exhibits 1 and 2 (¾ copies of Exhibit 1 and ¼ copies of Exhibit 2).

Government's Exhibit 9.

Five copies of Exhibit 2.

Government's Exhibit 10.

Small suitcase containing approximately 500 copies of Exhibits 1 and 2 in about equal proportions.

Government's Exhibit 11.

REVOLUTIONISTS!

UNITE FOR ACTION.

At present when the Russian revolution, which is precious to every one of us, is at stake, there is no time to discuss our different philosophies.

Now is not the time for one "Ism" to attack another "Ism"; let us leave it for another occasion.

Now is the time that all "Isms" should unite for action against the enemy of the Russian Revolution, which is, indeed, the only enemy of freedom, liberty and enlightment.

We revolutionists of America denounced the revolutionists of Germany because they did not protest against the endeavor of German militarism to crush the Russian Revolution. Now we are in the same position as the German revolutionists were few months ago.

Why don't we protest against the action of "Our Kaiser" who without asking the Congress has sent troops to crush the Russian Revolution?

The radical press fears to show to the masses the hypocricy of the United States and her Allies. Therefore it is the duty of the Revolutionists of America and of other allied countries to call meetings everywhere and make known to the people that the Russian Revolution, which is the beginning of emancipation and enlightment of the working class is threatened by their rulers.

The "printed prostitute, *i. e.* the yellow press" keeps the masses in darkness, by telling them that troops are sent to Russia to fight Germans. What we should do is to print the truth, as we see it, and spread it among the masses, which will enlighten them.

Socialists, Anarchists, Industrial Workers of the World, Socialists, Labor party men and other revolutionary organizations Unite for action and let us save the Worker's Republic of Russia!

Know you lovers of freedom that in order to save Russian revolution, we must keep the armies of the allied countries busy at home.

Government's Exhibit 12.

Package containing approximately 150 copies of Exhibits 1 and 2 in about equal proportions.

Government's Exhibit 13.

President Wilson with his beautiful phraseology has hypnotized the people of America to such an extent that they could not see the hypocricy of it until it is no longer possible not to "see."

Yes, we, the Workers of America, have been duped —duped by the wonderful speeches of President Wilson. Although most of us did know the corruption of all the capitalists and rulers, be they Kaizers, Czars, Kings or Presidents, yet we have almost revered the attitude that "our" President had taken toward OUR COUNTRY, the country which now is the only country of the proletariat. We really thought that he would not consent to intervention, or in other words, that he would keep his hands clean of this dirty business of destroying the Russian Revolution, the real proletarian revolution.

And here lies the hypocricy of it. The President of the United States had not the courage to come forward straight and openly and say "We, as well as all other capitalist nations of the world, cannot have this revolution in Russia prolonged. We also are dead afraid of this proletarian government, which, when once in full power, will destroy capitalism forever and will spread its dangerous doctrines all over the world." No, he kept his policy secret, but instead fed us on pretty empty phrases, and in the meanwhile American troops were already landing in Russia and were allying themselves with the other nations in the destruction of the Russian freedom, the real freedom of the working-class, and not the so-called democratic "freedom."

Yes, while we were being hypnotized here by the sweet lullaby of the President, the monarchs of this land were combining with the monarchs of all

lands in this bloody work of crushing Russia, thus furthering the cause of imperialistic and militaristic Germany as well. Is not the government of Germany just as afraid of this wave of the proletarian spirit as all other nations? And consequently by intervening in Russia, the allies are furthering the cause of Germany as well as their own. They are all combined, these blood-dogs of all nations—foe or no foe—when it comes to fighting their common enemy, their deadliest enemy—the awakened proletariat of their respective countries.

And thus all together the capitalists of this world are united in destroying what is just the beginning of the real proletarian social revolution.

Will we, the workers of America, allow this "intervention" without a murmur? Will we remain deaf to the cry of our brethern over the sea? Will we not raise an arm to stop it? Will we just sit hand-folded and look on how they, the hypocrites of this country, in unison with those of all other lands, are combining to make an end to our revolution, the Russian Revolution?

WILL WE AWAKEN TO THE FACT THAT WE HAVE BEEN DUPED?

WILL WE RISE IN OUR MIGHT AND REFUSE TO PARTICIPATE IN THIS BLOODY BUSINESS?

WILL WE ONCE AND FOR ALL MAKE A STOP TO THIS SHAMEFUL HYPOCRICY AND ANNOUNCE THAT WE KNOW ALL AND MEAN TO BLOW BACK?

While the guns of Europe are raging and the blood of youth is spilling like water on the altar of capitalism, the statesmen of every country are making plans how to "assist" Russia, but what we known to be, how really to ruin Russia.

Germany is restoring order in Russia; the allies with the United States are preparing to go to Russia and make a government for the Russian people. In other words, all without exception—the allies as well as the Central Powers—are helping Russia.

But thinking into this matter more profoundly, we come to the conclusion that the allies, who pretend to fight for democracy; that the Central Powers, who say they are fighting for their existence, are all forgetting their own fights and are starting for Russia, ready to put their whole strength for that fight.

Germany is tearing parts of Russia; the allies with Japan are ready to conquer Siberia, while shedding crocodile tears and making holy faces like "Billy Sunday" to make believe that they are helping Russia. And all this combined action is but to one end—to try and destroy the revolution. Germany is trying to make a new monarchy in Russia; the allies—a republic, like the United States. All in order that they may be able to put their iron clutches on the throat of the Russian proletariat, and exploit them as they are exploiting their own people in their own lands. They are trying their best to make Russia safe *for slavery*.

Will we allow that? "No," shall be our answer. We, the toilers of America, who believe in real liberty, shall pledge ourselves, in case the United States will participate in that bloody conspiracy against Russia, to create so great a disturbance that the autocrats of America shall be compelled to keep their armies at home, and not be able to spare any for Russia.

And furthermore, all those who are trying to agitate to invade Russia shall know that we are ready to do to them what they are preparing to do to Russia.

If they will use arms against the Russian people to enforce their standard of order, so will we use arms, and they shall never see the ruin of the Russian Revolution.

Government's Exhibit 14.

Same as Exhibit "1."

Government's Exhibit 15.

Envelope containing torn fragments of Exhibit 1 and showing corrections made thereon.

Government's Exhibit 16.

Misprinted copy of Exhibit 2.

Government's Exhibit 17.

Crumpled copy of Exhibit 2 misprinted.

Government's Exhibit 18.

Two bills rendered by Bursch Brothers to defendant Jacob Abrams showing sales to him of Hebrew and English type.

Government's Exhibit 19.

Tin pail containing partly burned copy of Exhibit 1 with other burned papers.

Government's Exhibit 20.

Time-cards showing the arrival of Hyman Rozansky at the American Hat Company where he worked on the morning of August 23, 1918, and on prior dates.

Government's Exhibit 21.

Package containing over 200 sheets of blank paper cut the same size and of the same quality of paper as Exhibits 1 and 2.

Government's Exhibit 22.

Fifteen trays of type containing Hebrew and English type.

Government's Exhibits 23 and 24.

Photographs of the exterior of the printing shop 1582 Madison Avenue.

Government's Exhibit 25.

Photograph of the interior of the same printing shop.

Government's Exhibit 26.

Original chattel mortgage dated July 17, 1918, made by defendant Jacob Abrams to Bursch Brothers, 47 Beekman St., New York, showing sale to said Abrams of Gordon printing press, complete with rollers and chases, motor and speed regulator, and printers' supplies, including type cases, English and Hebrew type, etc.

Government's Exhibits 27, 28, 29 and 30.

Pieces of type taken from Exhibit 22, which pieces of type are of the same size and style as the type used in printing Exhibit 1.

The foregoing contains all of the testimony given at the trial and all of the foregoing proceedings were had and exceptions taken and noted by the Court before the jury retired to consider of its verdict, and because the same would otherwise not appear of record the defendants pray the Court to sign this, their bill of exceptions, to have the same force and effect as to each of said exceptions as though the same were set forth in a separate bill of exceptions, which is granted; and accordingly the Court signs this defendants' bill of exceptions, to have the force and effect aforesaid now for them this 11th day of ~~March~~ February, 1919.

HENRY D. CLAYTON,
Judge.

Notice of settlement waived February 11, 1919.

~~FRANCIS G. COFFEY,~~
Francis G. Caffey
U. S. Attorney, S. D. of New York.

Assignments of Error.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JACOB ABRAMS, SAMUEL LIPMAN, HYMAN ROSANSKY, HYMAN LACHOWSKY and MOLLIE STEIMER.
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

Now comes the above-named Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer, plaintiffs in error, by their attorney, and make and file the following assignments of error upon which they will rely upon the prosecution of the Writ of Error to the Supreme Court of the United States sued out by them herein to review the errors committed in the above-entitled cause in the United States District Court for the Southern District of New York, and in the proceedings had therein and against them in the said Court:

That the District Court erred as follows:

FIRST: In not dismissing the indictment herein upon the ground that the same did not charge the defendants with any offense against the United States or any law thereof, in that it is not a viola-

tion of any law for defendants to have conspired and agreed among themselves and with other persons when the United States was at war with the Imperial German Government as aforesaid, unlawfully and wilfully to utter, print, write and publish disloyal, scurrilous and abusive language about the form of Government of the United States, or when the United States was at war with the Imperial German Government unlawfully and wilfully to utter, print, write and publish language intended to bring the form of government of the United States into contempt, scorn, contumely and disrepute or wilfully to utter, print, write and publish language intended to incite, provoke and encourage resistance to the United States in said war with the Imperial German Government; or unlawfully, wilfully by utterance, writing, printing and publishing to urge, incite and advocate curtailment of production of things and products, to wit: ordnance and ammunition necessary and essential to the prosecution of the war in which the United States now is and from April 6th, 1917, to the date of presentation and filing of this indictment continuously has been engaged, to wit, said war with the Imperial German Government with intent by such curtailment to cripple and hinder the United States in the prosecution of said war, and to attempt to effectuate and accomplish said conspiracy through and by means of circulating and distributing certain leaflets or circulars in the English and Yiddish language.

SECOND: In not granting the requests to charge to the jury as asked for by the attorney for plaintiffs in error and the exceptions taken thereto, especially in reference to free speech and free press,

and that if the pamphlets defendants were charged with conspiracy to give out are legal, defendants could not be found guilty of conspiracy in agreeing to give them out; in refusing to charge that the President can only commit an act of war against another government after declaration of war by Congress; that the President has no right to send an army into a country we are at peace with without authority from Congress; that any act of war by the President as Commander-in-Chief without permission of Congress or a vote of Congress is unconstitutional and illegal, and citizens may protest; that if the defendants believed they were protesting against an act that the President was not entitled to do, that there can be no violation of the Espionage Act by them.

THIRD: In not granting the motion for arrest of judgment on the ground that the indictment did not charge an offense against the United States or any law thereof.

FOURTH: In not setting aside the verdict upon the ground that the facts proved did not constitute an offense against the United States or any law thereof.

FIFTH: In denying the defendants' motion made at the opening of the trial and the end of the trial to dismiss the indictment upon the ground that the law it is claimed defendants violated is unconstitutional upon the following grounds:

(1) The Espionage Law is too uncertain and inexact as to what act or acts are prohibited by it.

(2) It violates Article I of the Amendments to the Constitution, which reads:

> "Congress shall make no law * * * abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

SIXTH: In denying the defendants' motion to dismiss the indictment herein or to instruct the jury to acquit made at the conclusion of the case as presented by the United States upon the grounds heretofore stated; and that upon all the facts proven the defendants are not guilty.

SEVENTH: In denying the defendants' motion to set aside the verdict of the jury rendered against them, which motion presented to the Trial Court was as follows: That the verdict was contrary to the evidence and contrary to the law.

EIGHTH: In denying the defendants' motion for arrest of judgment upon all the grounds hereinbefore set forth.

WHEREFORE, the said Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer, plaintiffs in error, pray that the said judgment herein for the errors aforesaid and for the errors in the record and proceedings herein may be reversed and altogether held for nothing, and that their said trial go for nought, and that the said plaintiffs in error may be restored to all things which they have lost by reason of said judgment,

and for such other and further relief as to the Court may seem proper.

Dated, New York, October 25th, 1918.

HARRY WEINBERGER,
Attorney for Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer, Plaintiffs-in-Error,
Office & P. O. Address,
261 Broadway,
Manhattan,
New York City.

Petition for Writ of Error and Order Allowing Same.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JACOB ABRAMS, SAMUEL LIPMAN, HYMAN ROSANSKY, HYMAN LACHOWSKY and MOLLIE STEIMER,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

Now comes the above-named defendants Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer, by their attorney, and complain that on the 23rd day of October, 1918, the District Court of the United States for the Southern District of New York gave judgment in the above-entitled cause against the defendants, in which judgment in this cause certain errors were committed to the prejudice of these defendants:

FIRST: In respect to the Court's construction and application of the Constitution of the United States and its disposition of the merits of the cause; all of which will appear more in detail from the Assignment of Errors which is filed with this petition.

WHEREFORE, the said defendants Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer pray for the allowance of a Writ of Error and such other orders and processes as may cause all and singular the record and proceedings in said cause to be sent to the Honorable Justices of the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and so that the same being inspected, the said Justices of the said Supreme Court of the United States cause further to be done therein to correct that error what of right and according to law ought to be done, and also that an order be made herein that all other proceedings in this action in this Court be suspended and stayed until the determination of said Writ of Error by the said Supreme Court of the United States.

And your petitioner will ever pray, etc.

Dated this 25th day of October, 1918.

HARRY WEINBERGER,
Attorney for Defendants, Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer,
Office & P. O. Address,
261 Broadway,
Borough of Manhattan,
City of New York.

Writ allowed this 26th day of October, 1918.

H. D. CLAYTON,
United States District Judge.

Citation on Appeal.

By the Honorable Augustus N. Hand, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to United States of America, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear before a Supreme Court of the United States, to be holden at the Capitol, Washington, in the District of Columbia, on the 28th day of November, 1918, pursuant to a Writ of Error, filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Jacob Abrams, Samuel Lipman, Hyman Rosansky, Hyman Lachowsky and Mollie Steimer are plaintiffs-in-error, and you are defendant-in-error, to show cause, if any there be, why the error in said Assignment of Error mentioned should not be corrected and speedy justice should not be done in that behalf.

GIVEN UNDER MY HAND at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 28th day of October, in the year of our Lord One Thousand Nine Hundred and Eighteen, and of the Independence of the United States the One Hundred and Forty-third.

AUGUSTUS N. HAND,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

Stipulation.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JACOB ABRAMS, SAMUEL LIPMAN, HYMAN ROSANSKY, HYMAN LACHOWSKY and MOLLIE STEIMER,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

IT IS HEREBY STIPULATED AND AGREED that the record in the above-entitled case shall consist of the following papers now on file with the Clerk of the United States District Court for the Southern District of New York:

Writ of error and order allowing same, dated October 28, 1918.
Indictment filed September 27th, 1918.
Bill of exceptions, dated February 1 7th, 1919.
Assignments of error dated October 25, 1918.
Petition for writ of error dated October 25, 1918.
Citation dated October 28, 1918.
Stipulation settling record March 6, 1919
Certificate, dated ~~February~~ March , 1919

Dated New York, March 6th, 1919.

HARRY WEINBERGER,
Attorney for Plaintiffs-in-Error.

FRANCIS G. CAFFEY,
U. S. Attorney for S. D., N. Y.,
Attorney for Defendant-in-Error.

Stipulation Settling Record.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JACOB ABRAMS, SAMUEL LIPMAN, HYMAN ROSANSKY, HYMAN LACHOWSKY and MOLLIE STEIMER,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated New York, March 6th, 1919.

ABRAM J. WEINBERGER,
Attorney for Plaintiffs-in-Error.

FRANCIS G. CAFFEY,
U. S. Attorney for the S. D. of N. Y.,
Attorney for Defendant-in-Error.

Clerk's Certificate.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

JACOB ABRAMS, SAMUEL LIPMAN, HYMAN ROSANSKY, HYMAN LACHOWSKY and MOLLIE STEIMER,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 7th day of March, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the said United States the one hundred and forty-third.

Alexander Gilchrist
Clerk.

(seal).

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

JACOB ABRAMS ET AL., PLAINTIFFS IN ERROR,
v.
THE UNITED STATES.
No. 912.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and respectfully moves the court to advance the above-entitled case for hearing at the opening of the next term.

Plaintiffs in error were indicted in the District Court of the United States for the Southern District of New York and were convicted of conspiracy under section 4, Title I, of the Espionage Act of June 15, 1917, 40 Stat. 217, 219, to violate the provisions of section 3 (Title I) of the act as amended May 16, 1918, 40 Stat. 553.

The indictment was in four counts, each of them charging a conspiracy to violate some one of the provisions of section 3 above set forth. Overt acts in furtherance of the conspiracy were also alleged.

Sentences varying from 3 to 20 years on each count, to run concurrently, and fines were imposed.

Plaintiffs in error, who are at large on bail, sued out a writ of error direct from this court alleging, among other things, the insufficiency of the indictment, insufficiency of the evidence, and the unconstitutionality of the statute in that it is too uncertain and indefinite and also abridges the freedom of speech and of the press in violation of the First Amendment to the Constitution.

Notice of this motion has been served upon opposing counsel.

ALEX. C. KING,
Solicitor General.

MAY, 1919.

○

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

JACOB ABRAMS *et al.*,
Plaintiffs-in-Error,

v.

THE UNITED STATES.

No. 912.

JOINT MOTION TO REDUCE THE AMOUNT OF BAIL OF HYMAN ROSANSKY.

Comes now Harry Weinberger, counsel for Hyman Rosansky, one of the plaintiffs-in-error in the above-entitled cause, the Solicitor General on behalf of the Government concurring therein, and moves the Court to reduce the amount of bail required pending the determination of the writ of error herein.

On the 11th day of November, 1918, this Court entered an order fixing the amount of bail upon which the plaintiffs-in-error might be released at $10,000, to be approved by a judge of the District Court of the United States for the Southern District of New York, and in accordance therewith each of the plaintiffs-in-error, with the exception

of Rosansky, has been released. Because of his poverty and inability to secure bail in that amount, the Government is now willing that he should be released upon nominal bail. The Solicitor General, therefore, concurs in the motion and asks the Court to modify its order so far as plaintiff-in-error Rosansky is concerned, reducing the amount of bail to $250.

HARRY WEINBERGER,
Counsel for Plaintiff-in-Error
Rosansky.

ALEX. C. KING,
Solicitor General.

April, 1919.

FILED
SEP 23 1919
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM—[redacted] 1919

No. 316.

JACOB ABRAMS *et al.*,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

IN ERROR TO DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFFS-IN-ERROR

HARRY WEINBERGER,
Attorney for Plaintiffs-in-Error,
261 Broadway,
Borough of Manhattan,
City of New York.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1918.

No. 316.

JACOB ABRAMS *et al.*,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

IN ERROR TO DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFFS-IN-ERROR

Statement of Case.

(*Citations to Transcript are to Printed Record.*)

On the 27th day of September, 1918, in the United States District Court for the Southern District of New York, the Grand Jury presented an indictment against the plaintiffs-in-error and one other, consisting of four counts (2-19). All were

under Section 4, Title 1, Act of June 15, 1917, for conspiracy to violate the provisions of Section 3, Title 1, of the Act of Congress approved June 15, 1917, as amended by the Act of Congress approved May 16th, 1918, known as the Espionage Act. Motions to dismiss the indictment and each count on the ground of unconstitutionality of the Espionage Law and that the indictment does not state a crime were denied (21).

The plaintiffs-in-error were convicted on all four counts (239-241). Motions for a new trial and to set aside the verdict as contrary to the evidence and contrary to law were denied (241). Judgment was rendered accordingly, and plaintiffs-in-error, Jacob Abrams, Hyman Lachowsky and Samuel Lipman, were sentenced to serve twenty years in the Penitentiary of the State of Maryland and $1,000 fine on each count, to run concurrently; Hyman Rosansky was sentenced to three years and $1,000 fine, to run concurrently, and Mollie Steimer was sentenced to fifteen years in Missouri State Penitentiary and $5,000 fine under each count, to run concurrently.

The indictment contains four counts in conspiracy to violate the Espionage Act. The overt act is the giving out of two pamphlets, one in English and one in Yiddish, being Government's Exhibits 1 and 2 (245, 247), herewith set forth in full.

Government's Exhibit 1.

The Hypocrisy of the United States and Her Allies.

"Our" President Wilson, with his beautiful phraseology, has hypnotized the people of America to such an extent that they do not see his hypocrisy.

Know, you people of America, that a frank enemy is always preferable to a concealed friend. When we say the people of America, we do not mean the few Kaisers of America, we mean the "People of America." You people of America were deceived by the wonderful speeches of the masked President Wilson. His shameful, cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington and vicinity.

The President was afraid to announce to the American people the intervention in Russia. He is too much of a coward to come out openly and say: "We capitalistic nations cannot afford to have a proletarian republic in Russia." Instead he uttered beautiful phrases about Russia, which, as you see, he did not mean, and secretly, cowardly, sent troops to crush the Russian Revolution. Do you see how German militarism combined with allied capitalism to crush the Russian revolution?

This is not new. The tyrants of the world fight each other until they see a common enemy—WORKING CLASS—ENLIGHTENMENT as soon as they find a common enemy, they combine to crush it.

In 1815 monarchic nations combined under the name of the "Holy Alliance" to crush the French Revolution. Now militarism and capitalism combined, though not openly, to crush the Russian revolution.

What have you to say about it?

Will you allow the Russian Revolution to be crushed? YOU: Yes, we mean YOU the people of America!

THE RUSSIAN REVOLUTION CALLS TO THE WORKERS OF THE WORLD FOR HELP.

The Russian Revolution cries: "WORKERS OF THE WORLD! AWAKE! RISE! PUT DOWN YOUR ENEMY AND MINE!"

Yes friends, there is only one enemy of the workers of the world and that is CAPITALISM.

It is a crime, that workers of America, workers of Germany, workers of Japan, etc., to fight THE WORKERS' REPUBLIC OF RUSSIA.

AWAKE! AWAKE, YOU WORKERS OF THE WORLD!

REVOLUTIONISTS

P. S. It is absurd to call us pro-German. We hate and despise German militarism more than do your hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House.

Government's Exhibit 2.

(*Leaflet in Yiddish; Translation as Follows:*)

WORKERS—WAKE UP.

The preparatory work for Russia's emancipation is brought to an end by his Majesty, Mr. Wilson, and the rest of the gang; dogs of all colors!

America, together with the Allies, will march to Russia, not, "God Forbid," to interfere with the Russian affairs, but to help the Czecko-Slovaks in their struggle against the Bolsheviki.

Oh, ugly hypocrites; this time they shall not succeed in fooling the Russian emigrants and the friends of Russia in America. Too visible is their audacious move.

Workers, Russian emigrants, you who had the least belief in the honesty of our government, must now throw away all confidence, must spit in the face the false, hypocritic, military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of the war. With the money which you have loaned, or are going to loan them, they will make bullets not only for the Germans but also for the Workers Soviets of Russia. Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom.

You who emigrated from Russia, you who are friends of Russia, will you carry on your conscience in cold blood the shame spot as a helper to choke the Workers Soviets? Will you give your consent to the inquisitionary expedition to Russia? Will you be calm spectators to the fleecing blood from the hearts of the best sons of Russia?

America and her Allies have betrayed (the workers). Their robberish aims are clear to all men. The destruction of the Russian Revolution, that is the politics of the march to Russia.

Workers, our reply to the barbaric intervention has to be a general strike! An open challenge only will let the government know that not only the Russian Worker fights for freedom, but also here in America lives the spirit of revolution.

Do not let the government scare you with their wild punishment in prisons, hanging and shooting. We must not and will not betray the splendid fighters of Russia. Workers, up to fight.

Three hundred years had the Romanoff dynasty taught us how to fight. Let all rulers remember this, from the smallest to the biggest despot, that the hand of the revolution will not shiver in a fight.

Woe unto those who will be in the way of progress. Let solidarity live!

THE REBELS.

Jacob Abrams, the oldest of the four defendants, is twenty-nine years of age, born in Russia, and not a citizen of the United States (162-163). Samuel Lipman and Hyman Lachowsky are also Russian citizens (198-222). Mollie Steimer, born in Russia 1897 (twenty-one years of age at time of indictment) (213).

The Government offered no proof, other than Government's Exhibits 1, 2, 11, 13, as to the intent of the defendants in giving out Exhibits 1 and 2, and offered no evidence in rebuttal to the defendants' testimony that their sole purpose was to object to American intervention in Russia.

I will quote from the testimony of the defendants as to defendants' intent in the distribution of the pamphlet:

Jacob Abrams testified:

> "Q. Tell your intention in giving out these pamphlets and what led you to give them out? A. My intention to give out those pamphlets was for the sole purpose to speak to those that love Russia and the Russians and would sympathize with Russia, and to protest against the intervention in Russia. That was my purpose" (168).
>
> * * * * * *
>
> "Q. Are you in favor of the United States crushing German militarism? A. I should say every Russian Revolutionist is in favor of that.
>
> Q. Are you in favor of Russia fighting German militarism? A. We have pledged ourselves to go and fight it, but didn't get a chance.
>
> Q. Would you be willing to go to Russia to fight German militarism? A. At any time.
>
> Q. Wouldn't you help send propaganda from Russia into Germany, to start a revolution there? A. We have done that in '97, where I was sent to Siberia for it, just on the border of Austria, and I was sent to Siberia for it" (180).
>
> * * * * * *
>
> "Q. You are opposed to German militarism in every form? A. Absolutely.
>
> Q. You would overthrow it and help overthrow it if you could? A. First chance" (182-183).
>
> * * * * * *
>
> "Q. And you were opposed and denounced German militarism? A. Yes. Leading anarchists right here in New York are fighting German militarism. It is a question of fighting German militarism" (184).
>
> * * * * * *

Under cross-examination by Mr. Miller:

"Q. Did you, in connection with other Russians, offer the President of the United States, to go to Russia and fight on the side of the revolution? A. Certainly. We sent a telegram and we received an answer by the—the Russian Soviets of America sent a telegram to President Wilson, asking permission that we organize recruiting stations. We never received any reply.

Q. You were willing to join that kind of a regiment? A. Any moment" (197).

"Q. After the Russian Czar was overthrown? A. After the Russian Czar was overthrown.

Q. You would not fight in the Russian army against German militarism, for what reason? A. Because the Russian militarism and the German militarism was the same object, and I had no reason to shed blood for it" (198).

Samuel Lipman in answer to:

"Q. What was your intent? A. My only intent to write this leaflet was to raise a protest against intervention in Russia by capitalistic nations.

Q. What were the facts which made you have the intent and made you write this pamphlet? A. Since I came to my understanding I have always thought that the governmer by the people, for the people and from the people, the workers, were the only ones. They produce all the necessities of life. They are the only ones that build the prisons where we are put and build the court rooms where we are tried, and I, therefore, thought the workers' government should be established. We should keep in power. I was overjoyed with the idea for the first time in the history of the world that we have a government by the people, for the people

and from the people. When the Bolsheviks came into power President Wilson delivered speeches in various parts of the country favoring the Russian Government—that is, the Soviet Government. In his speech to Congress he said, 'I stretch out my hand to the Bolsheviks.' On another occasion he said, I think it was July 4th, he said, 'We will not conclude peace without Russia.' On another occasion——

Q. Just leave the other occasions out of all those speeches; and then what was the next thing that happened, that made you write the pamphlet? A. Then, after all these speeches, President Wilson sent a telegram on the 12th of March to the Soviet Government where he appreciated the work of the government, and he said that the heart of the people of America was with the Soviet Government, and then in a few weeks later he sent, without announcing to the people, a military expedition to crush the Russian Revolution. That was my intent to write this leaflet.

Q. Those are the facts that made you have the intent and made you issue the pamphlet? A. Yes, sir" (200, 201).

"By Mr. Weinberger.

Q. Didn't you know, Mr. Lipman, that the Congress of the United States has never declared war against Russia? A. I did.

Q. Did you know from your study of history, that only Congress has the right to declare war? A. Yes, sir.

Q. You know that the President of the United States, even though he is Commander-in-Chief of the Army and Navy, can never use it against another nation until Congress declares war? A. Yes, sir; I do.

Q. Did you have any intention in writing any part of this pamphlet or the other ex-

hibits in the case, in helping Germany in its war against the United States? A. I did not. I am always against German militarism and the militarism of the world" (202, 203).

Mollie Steimer in answer to:

"Q. Now, what was your intention in giving these leaflets out? A. To call the attention of the workers to the fact that international capitalism seeks to crush the Russians Revolution; that the Allies were acting just as tyrannic, just as cruel as the Germans, by invading a neutral country and assailing those workers who were defending the revolutionary freedom. I called on the workers to raise their voice of protest against such a despotic action.

Q. You did not have any intention to uphold German militarism against the United States? A. Not at all.

Q. You are not in favor of German militarism? A. I despise militarism throughout the entire world, for it is an unnecessary evil."

Hyman Lachowsky in answer to:

"Q. You are opposed to intervention in Russia? A. Yes.

Q. And the purpose of giving out the pamphlets was only to protest on that score? A. Yes.

Q. You are not in favor of German militarism? A. Certainly not.

Q. Or Germany victory? A. No.

Q. You have no intention to hinder the United States in its war with Germany? A. No" (223).

It is admitted that the defendants agreed to print and distribute the pamphlets in question, and if it is a violation of law, where the intent was solely

to create public opinion against Russian intervention, they are guilty as charged.

Assignments of Error.

These will be found *in extenso* on pages 258 to 261 of the transcript of record.

POINTS.

The argument on the errors above set forth will be made under headings as follows:

I. The indictment does not charge and the evidence does not prove a crime.

II. The acts charged against the defendants are protected under the First Amendment to the Constitution.

I.

The indictment does not charge and the evidence does not prove a crime.

In *Chappel* v. *United States*, 160 U. S., 499, 509, the Court said:

> "This court * * * has appellate jurisdiction of this case as one in which the constitutionality of a law of the United States was drawn in question; and, having acquired jurisdiction under this clause, has the power to dispose, not merely of the constitutional question, but of the entire case, including all questions, whether of jurisdiction or of merits."

See also:

Sugarman v. *United States,* 249 U. S., at p. 183.
Goldman v. *U. S.,* 245 U. S., 474, 476.

FIRST COUNT OF THE INDICTMENT.

It charges defendants with conspiring to violate provisions of Section 3 of Title I of the Act of Congress approved June 5th, 1917, as amended by Act of Congress approved May 16th, 1918, commonly known as the Espionage Act, in that "defendants unlawfully and wilfully did conspire together and agree among themselves and with divers other persons," etc., "unlawfully and wilfully to utter, print, write and publish disloyal, scurrilous and abusive language about the form of government of the United States," etc.

There is not a single word in either Government's Exhibit 1 or 2 against the form of government of the United States. Not a single word can be pointed at to show that it was the desire of the defendants that the form of our government should be changed. Nothing disloyal, nothing scurrilous and nothing abusive about the form of government of the United States, and nothing to show that defendants desired or wished others to desire any other form of government.

The insufficiency of this count and of the evidence under this count is so plain it requires almost no argument. Calling the President or the action of those in control of the Government hypocritical and pointing out in what respect they can so be called is certainly not advocating a change in the form. It is what is done all year round by the opposing political parties, and especially done at election time, or at any time that the opposing

political party thinks that those in control of the Government have done what they believe to be unpopular or that they believe they can help make unpopular. The pamphlets in this case and the action of political parties are only another way of trying to convince the public that we need a change of administration or a change of public policy and is in no way connected with the question of the form of government, no more than the showing of actual corruption of public officials would or could be considered as advocating a change of the form of government, or disloyalty to the form, or scurrilous or abusive language about the form of government of the United States.

The right to criticize is the foundation of our Government.

SECOND COUNT.

This count charges that defendants "unlawfully and wilfully did conspire together," etc., "unlawfully and wilfully to utter, print, write and publish language intended to bring the form of government of the United States into contempt, scorn, contumely and disrepute," etc.

The argument under the first count applies to this. If one political party, a newspaper, magazine or these defendants point out wherein, in their opinion, the action of the officials of the Government is hypocritical or even corrupt, can it possibly be said that the form of government is brought into contempt, scorn, contumely or disrepute? If that could be claimed, then if the President of the United States or his cabinet or some of the high government officials or generals should be actually guilty of treason or corruption, the man or woman who would tell the truth about it or write about it

would also be guilty under this second count of the indictment. To state the proposition is to dispose of this count.

Third Count.

This count charges defendants with violating the Espionage Act in that defendants "unlawfully and wilfully did conspire together," etc., "unlawfully and wilfully, to utter, print, write and publish language intended to incite, provoke and encourage resistance to the United States in said war with the Imperial German Government," etc., and proceeds to charge that it was to be effectuated by the distribution of the two pamphlets, Exhibits 1 and 2.

The reading of the pamphlets clearly proves without argument that it dealt only with the question of Russian intervention; that it was not pro-German. The pamphlet (Exhibit 1) specifically states:

> "P. S. It is absurd to call us pro-German. We hate and despise German militarism more than do your hypocritical tyrants" (246).

The appeal is made to the people of America. It speaks against the crushing of the Russian Revolution. It compares that crushing with the "Holy Alliance" of 1815, formed to crush the French Revolution. And it ends with:

> "It is a crime, that workers of America, workers of Germany, workers of Japan, etc., to fight the workers' Republic of Russia" (246).

If the same appeal is made to the workers of Germany and other countries as well as to the workers of the United States, how can it be said to be on the side of Germany? How can it be said to incite, provoke and encourage resistance to the United States in said war with the Imperial German Government, when it does not take the side of the Imperial German Government, and does not discuss the war with the Imperial German Government? In Government's Exhibit 2 (247), in order to arouse the workers to thought and action, the pamphlets call their attention to the fact, and it was and is a fact, that "you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom." This Espionage Law was intended to prevent resistance to the United States in the war with Germany or to encourage, incite or provoke such resistance. That was the only purpose, while these pamphlets dealing only with Russia asks:

> "Will you give your consent to the inquisitionary expedition to Russia? Will you be calm spectators to the fleecing blood from the hearts of the best sons of Russia?" (247)
>
> * * * * * *
>
> "Workers, our reply to the barbaric intervention has to be a general strike" (248).

Arguing against intervention in Russia, trying to arouse public opinion, even to the calling of a general strike for that purpose, is certainly not to aid Germany, not to incite, provoke and encourage resistance to the United States in the war on Germany. These young people, citizens of Russia, were trying to stop intervention and invasion of Russia,

and the intent cannot be stretched to include a consideration of the war with Germany or a desire to interfere with said war on behalf of Germany, or to intend to incite, provoke and encourage resistance to the United States in said war with Germany.

FOURTH COUNT.

This count charges defendants with conspiracy "when the United States was at war with the Imperial German Government as aforesaid, unlawfully and wilfully by utterance, writing, printing and publication, to urge, incite and advocate curtailment of production of things and products, to wit, ordnances and ammunition, necessary and essential to the prosecution of the war in which the United States now is, and from April 6th, 1917, to the date of presentation and filing of this indictment, continuously has been engaged, to wit, said war with the Imperial German Government, *with intent by such curtailment to cripple and hinder the United States in the prosecution of said war,*" and again the method of carrying out that intent was giving out Government's Exhibits 1 and 2.

No other evidence but that of the distribution of the pamphlets by the defendants was submitted by the Government as to the defendants' intent. If language means anything, no intent to cripple and hinder the United States in the prosecution of said war with Germany can possibly be found in said pamphlets. There can be found in none of the pamphlets any expressions of sympathy for Germany or its aims. In fact, the whole trend of the evidence is that these Russian Anarchists (Lipman, however, is a Socialist) were opposed to all government, and so certainly opposed to the autocratic

militaristic government of Germany. The uncontradicted testimony of all the defendants, Russian citizens, was that they were in favor of Russia and opposed to intervention, and that that was their sole purpose.

Can an individual in America, with honest for the public good motives, tell what he believes is the real truth on public questions? Can he tell the truth as he sees it, with the desire to form public opinion according to his own? Was President Wilson correct when he said:

> "If there is one thing that we love more deeply than another in the United States, it is that every man should have the privilege, unmolested and uncriticized, to utter the real convictions of his mind. I believe that the weakness of the American character is that there are so few growlers and kickers among us. * * * Difference of opinion is a sort of mandate of conscience."

The United States Attorney-General issued the following instructions to United States attorneys as to the enforcement of Section 3 of the Espionage Act as amended:

> "The prompt and aggressive enforcement of this Act is of the highest importance in suppressing disloyal utterances and preventing breaches of peace. It is also of great importance that this statute be administered with discretion. It should not be permitted to become the medium whereby efforts are made to suppress honest, legitimate criticism of the administration or discussion of government policies; * * *"

That is defendants' contention under all the four counts, that these pamphlets were an attempt at

honest, legitimate criticism of the administration, and a discussion of government policies. It is well known that the Espionage Law was drawn by the office of the Attorney-General, and, therefore, the purpose of the law, as construed by the Attorney-General's instructions, is almost binding upon this Court as to its meaning.

In *United States* v. *Ves Hall* (District of Montana), 248 Fed., 150, Judge Bourquin said:

> "The Espionage Act is not intended to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk, but only false facts wilfully put forward as true and broadly, with the specific intent to interfere with army or navy operations. The more or less public impression that for any slanderous or disloyal remark the utterer can be prosecuted by the United States is a mistake."

Judge Learned Hand, in the *Masses Publishing Co.* v. *Patten,* 244 Fed., at page 539, said:

> "They are all within the range of opinion and criticism; they are all certainly believed to be true by the utterer. As such they fall within the scope of that right to criticize either by temperate reasoning, or by immoderate and indecent invective, which is normally the privilege of the individual in countries dependent upon the free expression of opinion as the ultimate source of authority. The argument may be trivial in substance, and violent and perverse in manner, but so long as it is confined to abuse of existing policies or laws, it is impossible to class it as a false statement of facts of the kind here in question. To modify this provision, so clearly intended to prevent the spreading of false rumors which may embarrass the

> military, into the prohibition of any kind of propaganda, honest or vicious, is to disregard the meaning of the language, established by legal construction and common use, and to raise it into a means of suppressing intemperate and inflammatory public discussion, which was surely not its purpose."

Nothing could better describe the pamphlets in this case. Intemperate they were and inflammatory they were, but it was a public discussion of a public policy in reference to a country with which we were not at war and are not at war, and against which country the use of troops has never been legal.

Judge Ward, in the higher court, in the *Masses Publishing Co.* v. *Patten*, 246 Fed. Rep., at page 39, said:

> "I think it important, however, to say that not every writing, the indirect effect of which is to discourage recruiting or enlistment, is within the statute. *In addition to the natural effect of the language on the reader, the intention to discourage is essential.* Arguments in favor of immediate peace, or in favor of repealing the Conscription Act, do this indirectly. It is, notwithstanding, the constitutional right of every citizen to express such opinions, both orally and in writing, and Congress cannot be presumed to have intended by the Espionage Act to authorize the Postmaster-General to exclude such articles, written honestly and without the intention of advising resistance to the law."

Judge Rogers, in the same case, said (p. 31):

> "The purpose of the act (Espionage Act) as we understand it was not to repress legitimate criticism of Congress or of the officers of

the government, or to prevent any proper discussion looking to the repeal of any legislation which may have been enacted."

In the case of *United States* v. *Max Eastman* (Southern District of New York, May, 1918), Judge Augustus N. Hand, in his charge to the jury, said:

"Every citizen has a right, without intent to obstruct the recruiting or enlistment service, to think, feel, and express disapproval or abhorrence of any law or policy or proposed law or policy, including the Declaration of War, the Conscription Act, and the so-called sedition clauses of the Espionage Act; belief that the war is not or was not a war for democracy; belief that our participation in it was forced or induced by powers with selfish interests to be served thereby * * * belief that the Allies' war aims were or are selfish and undemocratic; * * *

It is the constitutional right of the citizen to express such opinions, even though they are opposed to the opinions or policies of the administration; and even though the expression of such opinion may unintentionally or indirectly discourage recruiting and enlistment. * * *

If it was the conscious purpose of the defendants to state truth as they saw it; to do this clearly and persuasively in order to lead others to see things in the same way, with the object to bring about modification, reconstruction, or reshaping of national policy in accordance with what they believed right and true, and obstruction of the recruiting and enlistment service was not their object, the jury cannot find them guilty."

The charge against defendant, however, was the advocacy of curtailment of ordnance and ammuni-

tion in the war with Germany, while defendants' purpose was to reshape the national policy in reference to Russia, and if Judge Hand was correct, no violation of the Espionage Act occurred.

We are a government of and by discussion. The greatest right in the world is the right to a wrong opinion. Suppose the defendants were wrong in their honest opinion? Is that a crime? But suppose their opinion and statement was right, and history should so state? Their imprisonment would be a crime. These defendants merely brought to the bar of public opinion intervention in Russia by President Wilson.

If they were wrong, a counter-statement of the truth alone would be a sufficient answer.

The denunciation of governmental policies even in war times is not new.

Alexander H. Stevens, of Georgia, in a speech on February 15, 1847, while the Mexican War was at its height, said:

> "The President has more than once told us that the war is not waged for conquest. Is there a friend of his on this floor who supposes that anybody familiar with the unparalleled duplicity of his administration will do the President the injustice to believe him. Every act of his toward Mexico before the war began and since the war began displays his policy too clearly to be mistaken." (See *McMaster's History of the United States,* p. 477; also *Cong. Globe,* 29th Cong., 2d sess., p. 401.)

Charles Sumner, in a speech at Tremont Temple, Boston, November 5, 1846, said:

> "The Mexican War is an enormity born of slavery. * * * Base in object, atrocious in

> beginning, immoral in all its influences, vainly prodigal of treasure and life, it is a war of infamy which must blot the pages of our history."

Daniel Webster, at Faneuil Hall, on November 6, 1846, speaking of the Mexican War, said:

> "Mr. Chairman, I wish to speak with all soberness in this respect, and I would say nothing here to-night which I would not say in my place in Congress or before the whole world. The question now is, For what purposes and to what ends is this present war to be prosecuted? * * * It is time for us to know what are the objects and designs of our Government. * * * We are, in my opinion, in a most unnecessary and therefore a most unjustifiable war."

McMaster's History of the People of United States, in Volume VII, page 497, and subsequent pages, gives various quotations from newspapers which condemn in the most violent language the conduct of the administration in the Mexican War. These publications appeared during the war.

The philippics delivered by Fox, Burke and Chatham against the British Government for the prosecution of the war against the American Colonies are among the classics of English literature and familiar to every schoolboy, while the terrific indictment of his government by John Bright for its part in the Crimean War was a work for which his name is now most honored by his fellow-countrymen.

But we are not at war with Russia, and surely if the condemnation of government or policy in reference to an actual war was proper, legal and constitutional, a denunciation of the Government in reference to a policy against a country with which

we are not at war is legal and constitutional and in no way violates the Espionage Law. Congress has never declared war against Russia even to this day, and Article I, Section 8, states:

> "The Congress shall have power * * * Subd. 11. To declare war, * * *."

There was only one object in the giving out of these pamphlets, to stop Russian intervention by creating public opinion against it. Nothing in the furthest stretching of the language of the pamphlet could be construed as intending to aid Germany in the war or to hinder the United States in the war with Germany, and no conspiracy to violate the Espionage Law or conspiracy to aid Germany, directly or indirectly, was proved.

Disapprove of defendants' opinion, perhaps, but the defendants' right to have a different opinion from the President or Congress or even the majority of the people of the United States, and to express that opinion, cannot be denied.

If the utterance of unpopular opinion shall be punished, the public cannot be properly informed so that the unpopular opinion may become the popular and the Government directed in a new course.

If these defendants told the truth, and their motives were the public good, or if they told what they believed to be the truth, and their motives were for the public good, it is an absolute defense.

In the recent case of *Frohwerk* v. *United States*, 249 U. S., 207, 208, Mr. Justice Holmes has well said:

> "We do not lose our right to condemn either measures or men because the country is at war."

The discussion of public questions is absolutely immune under the First Amendment to the Constitution, when that is the only intention in the discussion. The manner or matter of the discussion can make no difference. If the truth interferes with the action of the Government, then the Government is at fault. If the statements are untrue, though the defendants believe them to be true, the answer should not be an indictment and jail, but the truth. For the predisposition of the people is toward the Government, and, as stated in the Declaration of Independence: "All experience hath shown that mankind are more disposed to suffer, while evils are sufferable." A discussion of public questions and statements of facts believed to be true cannot be stopped by jail, but can only drive people to underground propaganda. The defendants did not urge resistance to a law; they called for an act which would call forcibly to the Government's attention that the public were against its action or its policy of intervention in Russia.

The sole intent was to make public opinion against Russian intervention, and not to interfere with the war with Germany.

Nothing can be clearer from the reading of the pamphlets distributed, and nothing can be clearer after reading the actual evidence of witnesses in the case.

This indictment and conviction punishes these defendants for attacks on governmental policies in Russia. Since their trial, and still during the war, the same opinions have been expressed by public men in Congress and out of Congress, in magazines and in newspapers, in many instances in language even more bitter.

The press has been filled with anonymous lies and libels in reference to the Bolshevik and the

revolution in Russia; these defendants pleaded for the truth. The article by Arthur Ransome, an Englishman, in the *New Republic* of July 27, 1918, entitled "An Open Letter to America," and his book "Russia, 1919," and the articles of Raymond Robins, an American, in *The Metropolitan* for June, July, August, September and October, 1919, must be read for the unbiased facts in reference to Russia and the Bolsheviki.

Russia was first to declare for no annexation, no indemnity and the self-determination of nations. That is what these defendants pleaded for, that Russia be allowed to settle her own affairs and her own form of government.

I would quote here from Arthur Ransome's open letter:

> "America was young once, and there were men in America who would have brought in foreign aid to re-establish their dominion over a revolted nation. Are those the men to whom America now looks back with gratitude and pride?
>
> Well, writing at a speed to break my pen, and with the knowledge that in a few hours the man leaves Moscow who is to carry this letter with him to America, I have failed to say much that I would have said. I write now with my messenger waiting for my manuscript and somehow or other, incoherent, incomplete as it is, must bring it to an end. I will end with a quotation from your own Emerson. 'What is the scholar, what is the man for, but for hospitality to every new thought of his time? Have you leisure, power, property, friends? You shall be the asylum and patron of every new thought, every unproven opinion, every untried project, which proceeds out of good will and honest seeking. All the newspapers, all the

tongues of to-day will of course at first defame what is noble; but you who hold not of to-day, not of the Times, but of the Everlasting, are to stand for it; and the highest compliment man ever receives from heaven is the sending to him its disguised and discredited angels.' No one contends that the Bolsheviks are angels. I ask only that men shall look through the fog of libel that surrounds them and see that the ideal for which they are struggling, in the only way in which they can struggle, is among those lights which every man of young and honest heart sees before him somewhere on the road, and not among those other lights from which he resolutely turns away. These men who have made the Soviet government in Russia, if they must fail, will fail with clean shields and clean hearts, having striven for an ideal which will live beyond them. Even if they fail, they will none the less have written a page of history more daring than any other which I can remember in the story of the human race. They are writing it amid showers of mud from all the meaner spirits in their country, in yours and in my own. But, when the thing is over, and their enemies have triumphed, the mud will vanish like black magic at noon, and that page will be as white as the snows of Russia, and the writing on it as bright as the gold domes that I used to see glittering in the sun when I looked from my windows in Petrograd.

And when in after years men read that page they will judge your country and mine, your race and mine, by the help or hindrance they gave to the writing of it."

Raymond Robins, head of the Red Cross in Russia, in *The Metropolitan Magazine* for July, 1919, said:

> "But General Hoffman lived to cease to despise the power of Trotsky and Lenin and Bolsheviks. Fifteen months later, with the war ended and with Germany in defeat and revolution, he said to Ben Hecht of the *Chicago Daily News:*
>
> 'Immediately after conquering those Bolsheviki, we were conquered by them. Our victorious army on the Eastern front became rotten with Bolshevism. We got to the point where we did not dare to transfer certain of our Eastern divisions to the West. Our military machine became the printing press of Bolshevist propaganda. It was Bolshevist propaganda that rotted Germany from the East and broke her morale and gave us defeat and this revolution you now see ruining us.'"

And in the same article Robins further said:

> "In Russia, in the territory of the old Russia, along its eastern frontier, there had emerged three governments. There was one in Finland. There was one at Petrograd. There was one in the Ukraine. The one at Petrograd was Red. The other two were White. In all three regions there was a struggle between Whites and Reds. It was the same struggle, involving everywhere the same fundamental social issue.
>
> In Finland the French gave formal recognition to the White government. It was a 'law and order' government. It was fighting and killing Trotsky's and Lenin's Red Guards. It was a 'good' government. It at once called in the Germans and accepted German troops and turned Finland into a German dependency.

In the Ukraine the Allies gave the White Government their active favor and support. This government also was a 'good' and a 'law and order' government. It also was fighting Lenin's and Trotsky's Red Guards. From Allied money it received an official present of 130,000,000 francs. Four days later it called in the Germans and filled the Ukraine with German troops; and, of its own free will, not under foreign compulsion, but purely for domestic reasons, in order to down its domestic Red enemies, it turned the wheat fields of all southern Russia into German wheat fields and Odessa into a German port.

The Government at Petrograd, among these three governments, was the only one that was Red, but it also showed another difference. It was the only one that never called in German troops against its domestic enemies and also the only one that at any time ever did Germany the slightest harm. It did it the prodigious harm described by General Hoffman. It rotted the fiber of imperial loyalty out of a whole section of the German army and out of a whole section of the German population.

But this Government was as weak in physical power as it was strong in propaganda. Its army was dissolved—dissolved by economic and moral exhaustion ensuing upon intolerable effort. The American Committee on Public Information, which co-operated with the Bolshevik Government in propaganda but then became one of the Bolshevik Government's bitterest enemies, said, nevertheless:

'Russia fought on to utter exhaustion, and her army yielded only when the power of further effort was gone.'"

If the Court will read Robins' articles and documents showing American interference in Russia,

how America blundered time and again and "backed the wrong horse," the fact that these defendants, Russian citizens, decried and denounced Russian intervention becomes understandable and not pro-German, but pro-Russia, pro-idealism, pro-democracy, pro-letariat—all of which fundamentally is pro-American. It is clear from Robins' articles and speeches that the Russian Bolsheviks were never pro-German, and that even the peace was signed at Brest Litovsk because of necessity, and because the Allies blundered, and because America and England would not promise military equipment, transportation, supplies, living necessities as a basis of Russia continuing the war, and refusing to ratify the Brest Litovsk Peace Treaty.

Twenty-year jail sentence for distributing circulars on a public question! Could that be the intent of Congress in passing the Espionage Law? Could Congress believe that it had the power to stop discussion of public questions by making the punishment almost equivalent to life imprisonment? Was it not the intention solely to prevent the helping of Germany, directly or indirectly? No other construction is possible, without writing America down as the new home of an old despotism. Twenty years for bitterly denouncing American military intervention in Russia, against which country no declaration of war has ever been made.

Whether it is believed that the circulars were justified and that revolutionary Russia actually had been betrayed by the Allies—though we were not allowed to prove it at the trial—the defendants were entitled to express that belief if their intent was to arouse public opinion by the public expression of their opinion. Russia had been surrounded by a stone wall of lies—and these young defendants protested against the lies and against

military intervention in Russia—not to help Germany—not to hurt America—but to bring America back to its idealism—back to the road it had travelled since its revolutionary birth.

We attempted to prove that the Sisson documents were forgeries. We attempted to prove that the Bolsheviki were not pro-German. We attempted to prove that they were really pro-Ally and against German militarism, German autocracy, and that these defendants, in giving out these leaflets, were standing with the Bolsheviki for Russian liberty, and not for German militarism. Even the Government will probably admit that the defendants were not pro-German. These defendants brought the acts of the President of the United States in intervening in Russia to the bar of public opinion.

It came into the evidence, as far as Abrams was concerned, his past in trying to overthrow the Russian Czar; the fact that he was sent to Siberia fighting against autocracy in Russia, would he now help German war aims in America? Surely no one can question that Abrams or the other defendants were not in favor of German autocracy, and if that is so, the Government's case falls. Not pro-German, but liberty-loving Russians, are these defendants.

If our Government was true, if our Government was right, in intervening in Russia, a discussion would not hurt us. If we were wrong—being awakened by a fire-bell would not be too much—and these defendants were doing a service to humanity and to us. Using the Espionage Law in a case like this by a long jail sentence to stop discussion was and is futile—the action of the United States in Russia is being weighed around the world, and thoroughly questioned in the Senate and in the magazines and in the newspapers and in the homes of America.

These defendants, these idealists, wanted to help Russia and not hurt the United States. They wanted to help Russia and not help Germany; they had no thought of Germany in their minds; they had no thought of interfering in the war between the United States and Germany. They had one big idea—to carry to the Americans, a liberty-loving people, calling to their attention what they thought was an illegal, or, rather, they would not use the word illegal, but I will—what they thought was a wrongful act by the President of the United States, without authority of Congress, sending an army to invade a nation we were at peace with, calling to the American public to protest.

All the fighting in Russia to-day is being done either by Allied or American troops or by counter-revolutionary troops, instigated, financed and supplied by the Allies (according to the frank admission of Mr. Lloyd George in the House of Commons on April 16, 1919).

These defendants were engaged in issuing leaflets protesting against military intervention in Russia on the ground that it was against the best interests of the workers of Russia and the world, and the further ground that war had never been declared on Russia by the Congress of the United States. The defendants had no animosity against the prosecution of the war with Germany. Defendant Abrams testified on the trial how he and other Russians, after the overthrow of the Czar, had offered to the President of the United States to form a Russian regiment in the United States and proceed to Russia to fight Germany and the Kaiser on the Eastern front.

The defendants' stand of protest by leaflets is bitter, their choice of language harsh, but mostly it is proper criticism, and it is the kind of act we

would be proud of if made by Americans in Russia, if Russia were invading the United States with an army after promises of economic help.

As to the secretly giving out of the pamphlets protesting against intervention by these plaintiffs-in-error, as evidence of evil intent, this Court can judicially take note of the fact that lawful public meetings and distribution of leaflets were prevented by agents of the Department of Justice and public officials during the war, and even an appeal for defense fund for men on trial was stopped and legal defense committees broken up, while the Postmaster stopped all mail of certain individuals and newspapers, without giving them their day in court. The wisest philosopher statesman since Benjamin Franklin was Mayor William J. Gaynor, and he protested against driving people to underground presses to get their ideas before the people. He said:

> "It is the worst policy in the world to drive people to secret meetings and plottings. It is hard to make a little 'pin head' in authority understand this in this free country, where, of all the world, it should be understood. He prefers the (old) Russian methods of force."

The conviction in this case was the result of frenzied fear. The pamphlet was an unwelcome truth, but even if it was error, truth was the answer and not jail. So democracy has always decided.

The President has never explained why the Big Four refused to proceed with the negotiations with Soviet Russia after Lenin had accepted peace proposals. The Soviet did accept peace proposals delivered by Messrs. Bullitt and Steffens. (See Bul-

litt's testimony before the Foreign Relations' Committee of the United States Senate.) The Soviet even agreed to acknowlege the financial obligations of the former Russian Empire. Lenine was ready to stop hostilities. Were the Russian emigres too powerful in Paris, London and Washington?

In the *Nation* of September 6th, 1919, under a heading "Mr. Asquith on Intervention," they print the following:

> "The policies of the Coalition Government were severely criticized by Mr. Asquith, former Prime Minister, in a recent speech before the Willesden Liberal Association. We reprint from *The Times* (London) for July 28, that portion of the speech which deals with Russia: 'At this moment war—I might almost say a number of wars—is still going on. What I said the other day in private to some of our fellow-workers I will repeat in public here, that the one great menacing and overshadowing figure is the problem of Russia.
>
> I confess to you that I regard with bewilderment and with apprehension the part which this country is playing in that quarter of the world. We want, the nation wants, the world wants, clearer definition than has yet been given to us of our commitments, actual and prospective, there. (Hear, hear.) We are constantly being assured that the forces of the Allies still engaged in that theatre of belligerency are small in number, are always on the decrease, and every now and again on the point of withdrawal. Yet we see month by month the continuing expenditure of British blood and British treasure. (A voice, 'Shame.') So far as I can discover, all this time we are doing neither one thing nor the other. Meanwhile, attempts are being made in quarters still not

wholly without influence to agitate for an increase both in the scale and in the scope of our intervention. I trust and believe that those attempts will be strenuously and successfully resisted. (Hear, hear.) This, believe me, is not a time when we can afford to embark on crusades for the extermination of what is called Bolshevism. (Hear, hear.)

Whence have we derived any mandate for any such mission? At Paris during these last few months the representatives of the Allies have been paying homage, legitimate and well-merited homage, to the principle of self-determination. That is a principle which is good for great as well as for small communities. It is not for us, if I may presume to say so, it is not for the Allies to take sides in the domestic controversies and the constitutional developments of independent nations. (Hear, hear.) We are quite capable of defending our own interests and those of our Allies if and when they should be attacked. But we have all, I hope, a friendly feeling for the great Russian people, who during the first two years of the war fought manfully and heroically in defence of the cause of freedom, and who are now called on to pass through at home a fiery ordeal of their own. The future Government of Russia is a matter for the Russian people (cheers), and for no one else but the Russian people to decide."

On May 10th, 1919, before the French Academy of Moral and Political Sciences, President Wilson said:

"My view of the state is that it must stop and listen to what I have to say, no matter how humble I am. * * * I have always been among those who believe that the greatest freedom of speech was the greatest safety.

* * * In this free air of free speech men get into that sort of communication with another which constitutes the basis of all common achievement."

Senator Johnson of California (Cong. Rec., Feb. 3, 1919) said:

"I know the fact that we are making war; and no amount of specious argument can convince the American people that when you kill in fighting and you are killed in return, when armies go forth in battle array and indulge in shooting one another down, it is not warfare. What is it, if it is not warfare?"

* * * * * *

"Do you know who make Bolsheviki in America? You and I are making the Bolsheviki of this country when you and I, seeing the law violated, the Constitution rent and torn, dare not take our stand in behalf of American blood and American soldiers, who, without warrant of law, and in violation of the Constitution of the United States, are killing and being killed in Russia to-day. That is the sort of thing that makes Bolsheviki, using the word in the aspect and in the characterization to which I have just alluded. When the men who are intrusted with the enforcement of the law, who have held high their hands and sworn that they would protect the Constitution of the United States, trample it under foot and permit boys of theirs to be murdered in Russia, in violation of that Constitution, that is the sort of thing, my Senators, that makes Bolsheviki in a nation, and that is the sort of thing that makes unhappy, discontented, and rebellious people."

Senator Johnson of California, in Congressional Record, January 29, 1919, said:

> "Russia, Mr. President, is a marvelous country. It contains one-sixth of the earth's surface, with fertility of soil and wealth in mineral resources surpassing those of any other part of the earth. This Soviet government to which our President for us spoke so kindly, begged us for economic aid and wished to make us the most-favored Nation. We, in the rigidity of our virtue, though asking the aid of the anarchists in our midst, with the Bolsheviki er there, and though publicly proclaiming our friendship and our love, would not accept the proffer. Weak and vacillating, stupid, and ignorant has *been our policy with Russia*. We solemnly promised we would not intervene, and then, prating of our love for the Russian people, we did intervene. Prating about guarding stores at Archangel, we advanced from 100 to 300 miles from that port, took and burned little Russian towns, and upset little Soviet governments. In the name of protecting military supplies, which were offered to us again, and again, and again, and which we could have had for the asking, we shot down Russian peasants, and our boys are shot down by them. The Senator from Nebraska insists our only purpose in landing at Archangel was to protect the stores. Our only advance beyond Archangel was to prepare military bases. He is wrong. We were marching down from Archangel—and the facts will demonstrate it—that we might make conjunction with the Omsk Government and might perfect the ring of steel which we had thrown around interior Russia, and which was starving innocent women and children. The Senator from Virginia gravely speaks of the German menace. What German menace since November 11? Are

our people children to be lulled into repose by such stuff as this? The very learned and logical Senator from Colorado tells us that we are not making war upon Russia; that Russia is making war upon us. Apparently his argument seems to be that if the Russians had not resisted when we advanced into their territory there would have been no conflict and no killing. What a strange and fantastic doctrine is this! If an army landed in New York, marched to Buffalo, and the people in central New York resisted and fought them, by that fact, then, New York was making war upon the invading army and the invading army was innocent of wrong. The French are under no illusions in this matter.

They are for intervention, and they believe they are intervening upon a small scale, too small, as they put it, now. They make no pretense that they wish supplies guarded. They wish Russians killed and another government set up. What hypocrisy upon our part to say to our people, and to the Russians, in our pronunciamento last year when we commenced our intervention, that we contemplated 'no interference with the political sovereignty of Russia, no intervention in her internal affairs, not even in the local affairs of the limited areas which her military force may be obliged to occupy, and no impairment of her territorial integrity, either now or hereafter.' No sooner had we landed at Archangel than we shot the Soviet Government there existing out of town and set up a government of our own. No sooner did we go into the interior than everywhere we found a local soviet we shot it to death and set up our own mode of government. Then we tell our people that we intend no interference with the internal or local affairs of Russia?"

William Allen White, when he returned to this country, said:

> "There is no red terror in Russia to-day; the peasants are supporting the Soviet government; schools are open throughout Soviet Russia, school children are getting food, and education is managed according to the most modern methods; the Soviet government wants peace and is willing to make terms."

Leading public men, Senators, newspapers and magazines have demanded that we withdraw our troops from Russia both before the armistice and since the armistice. On August 20th, 1919, the *New York Evening Sun* reported the presentation of 100,000 signatures to the President of the United States asking for the withdrawal of our troops in Russia.

In the *Nation* of May 31st, 1919, it states:

> "The loathsome hypocrisy of the Administration's Russian policy becomes clearer with every passing week. On January 8, 1918, Mr. Wilson declared that the treatment of Russia would be the 'acid test' of our goodwill, and stated as one of the Fourteen Points 'the evacuation of all Russian territory (it was Germany which held it then) and such a settlement of all questions affecting Russia as will secure the best and freest co-operation of the other nations of the world in obtaining for her an unhampered and unembarrassed determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing.' Since that time we have seen Russia invaded from at least three directions by American, British, French, and other Allied troops, with Mr. Wilson's con-

sent. We have seen public opinion in the United States systematically poisoned concerning Russia, with the connivance of high-placed Government officials, and Mr. Wilson has spoken no word. We have blushed with shame at the perfidy and dishonor of the Sisson documents, and Mr. Wilson was busy elsewhere. We have seen Russia invaded from the north to meet the German menace, and from the east to aid the heroic Czecho-Slovaks. The Germans are disarmed, and the very existence of the Czecho-Slovaks is all but forgotten, but American armies are still unwillingly fighting in the north and in Siberia.

After honest and simple-minded Americans had protested so loudly that the Administration no longer dared ignore their demands, we were promised that our troops would be withdrawn from Archangel—and straightway a new force of engineers was dispatched to Northern Russia. Now we read that 'American railroad troops are playing an important part in the rapid advance of the Allied troops southward along the Murmansk railway.' Meanwhile our troops remain in Siberia, and the War Department is recruiting 8,000 volunteers for service there. An Associated Press dispatch from Omsk states that the so-called All-Russian Government there has requested Major General Graves not to send American troops farther into the interior of Siberia, the desire being 'to preserve the existing friendly relations with America which, in view of the American Government's undefined stand on Bolshevism, might otherwise be jeopardized.' The Omsk Government need not worry. Mr. Wilson has been carrying on war against Soviet Russia for ten months, and General Graves, in a message to his troops, declares that 'the policy to be followed by our troops in any country is one to be determined by the

> Executive.' So much for Wilsonian Realpolitik by comparison with the old-fashioned theory that it is the business of Congress to declare war. And General Graves has apparently caught even the President's phraseology, for he adds that 'every nation has its own ideals and traditions which should be respected by all, and especially by guests, as we are.' Having seized long stretches of the Trans-Siberian Railway, we appear to be the kind of 'guests' who make their entrance by climbing up the back porch. It is hard to believe that the American people, who are for the most part honest and kindly folk, can much longer stomach the Administration policy in Russia of combined burglary and starvation, coupled with pious phrases. There is surely honesty and courage enough in Congress to put an end to this iniquity."

These few extracts are quoted to show that these defendants are not alone in their opinions, and that the same opinions were expressed both before and since the armistice, when the question of Germany could not be considered in the intent, and held by magazines, newspapers and public men whose patriotism was beyond question.

Judge Cooley in his book on Constitutional Limitations, page 527, said:

> "It is very easy to lay down a rule for the discussion of constitutional questions; that they are privileged if conducted with calmness and temperance, and that they are not indictable unless they go beyond the bounds of fair discussion. But what is calmness and temperance, and what is fair in the discussion of supposed evils in the government? And if something is to be allowed 'for a little feeling in men's minds,' how great shall be the allowance? The heat of the discussion

will generally be in proportion to the magnitude of the evil as it appears to the party discussing it. Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance and fairness. They must be left at liberty to speak with the freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all the proper bounds of moderation, the consolation must be that the evil likely to spring from the violent discussion will probably be less and its correction by public sentiment more speedy than if the terrors of the law were brought to bear to prevent discussion."

In *Gulf etc.* v. *Ellis,* 165 U. S., 160, this Court aid:

> "It is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence."

The Declaration of Independence provides that hen any form of government becomes destructive f these ends it is the right of the people to alter abolish it. If the people have the right to alter abolish the Government, they certainly have the ght to discuss every act of the Government, to conmn it or approve it, and to attempt to create pubopinion by laying their arguments and their befs before all the people.

II.

The First Amendment to the Constitution makes Espionage Law unconstitutional.

The First Amendment to the Constitution provides that:

> "Congress shall make no law * * * abridging the freedom of speech or of the press * * *."

This case turns on the question whether the right of free speech and free press guaranteed in the First Amendment protected the defendants in the issuance of the two pamphlets, Government's Exhibits 1 and 2. If the answer is they were, the conviction of the defendants should be set aside. If the Espionage Law was violated, is that law constitutional?

In *Frohwerk* v. *United States,* 249 U. S., 207, 208, this Court, by Mr. Justice Holmes, said:

> "We do not lose our right to condemn either measures or men because the country is at war."

In *Debs* v. *United States,* 249 U. S., 211, the Court, by Mr. Justice Holmes, approved of the charge to the jury on the trial as follows:

> "We should add that the jury were most carefully instructed that they could not find the defendant guilty for advocacy of any of his opinions unless the words used had as their natural tendency and reasonable probable effect to obstruct the recruiting service, etc., *and unless the defendant had the specific intent to do so in his mind.*"

The intent in the minds of these defendants was objection to Russian intervention, and nothing more. (See argument under Point I.)

In *Patterson* v. *Colorado,* 205 U. S., 454, 462, the Court states that the constitutional provision, free speech and free press, is only for the purpose of preventing previous restraints, and says:

> "The main purpose of such constitutional provisions is to prevent all such previous restraints as had been practiced by other governments, and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare."

In the same case, at page 465, Mr. Justice Brewer states what I believe to be the correct meaning of the First Amendment to the Constitution when he said:

> "It (the Court) yet proceeds to say that the main purpose of such constitutional provisions was to prevent all such 'previous restraints' upon publications as had been practiced by other governments, but not to prevent the subsequent punishment of such as may be deemed contrary to the public welfare. I cannot assent to that view, if it be meant that the legislature may impair or abridge the rights of a free press and of free speech whenever it thinks that the public welfare requires that to be done. The public welfare cannot override constitutional privileges. * * *

As a matter of fact, the right the colonists thought and intended to guarantee was the unabridgable liberty of discussion as a natural right, not to be abridged on the plea of furthering the public welfare. To give to the Government the power to

control what others may hear or see is, of course, to that extent a limitation upon their right to acquire and have opinions, thus abridging the liberty of conscience, since one cannot well acquire opinions the materials of which are withheld from him.

To say that the right of free speech and free press applies only to prior restraint is a pure quibble, as the statute imposing a penalty of twenty years' imprisonment is even more effectual than any previous restraint that could be devised.

In 1803 an edition of Blackstone was edited and published by Prof. St. George Tucker, and in "Note G" he discussed the meaning of free speech and free press and makes a distinction between the English idea and the American, and defines free press as follows:

> "Every individual, certainly, has a right to speak or publish, his sentiments on the measures of government; to do this without restraint, control, or fear of punishment for so doing, is that which constitutes the genuine freedom of the press."

Opposition to governmental policies up to the time of the armistice was almost absolutely silenced, and discussion of the facts remained unheard.

If the liberty of free speech and a free press can be taken away by the Government in war time on the pretext of the public welfare, it can be taken away in peace time on the same pretext. No opinion other than such as had been deemed contrary to the public welfare by those in governmental authority ever had been suppressed at any time in history. Can it be contended that what had really been intended to be written in the Constitution was:

> "Congress shall make no law abridging freedom of speech or of the press, except in the interest of the public welfare."

"Shall make no law abridging," etc., cannot properly be interpreted to mean that, in the alleged interest of the public welfare, Congress may enact any abridging laws it sees fit, if thereby no restraint is imposed prior to publication. To construe it that way is to make it a nullity. As a matter of fact, during the war, district attorneys, United States marshals and other government officials and self-appointed patriotic censors did exercise, for perhaps what they believed for the public welfare, restraints prior to publication and expression, ideas that were considered inimical, by warning and often arresting printers and owners of public halls, and by the action of postal authorities in denying the mails to publications and books, and censoring mail. So that even that right was no longer available in time of the war.

If the Constitution gives us the right of free speech and free press, then this right cannot be destroyed by the arbitrary decree of Congress, even though done in the alleged interest of the public welfare, and by calling the decree an Espionage Law, and even though the Courts concur that the decree is for the benefit of the public welfare. The right guaranteed in the Constitution was intended to enlarge intellectual opportunity as against abridgment either by prior restraint or subsequent punishment. The existence of the power to suppress any opinion is, in the long run, more destructive to human well being than the ideas against which the power is exercised.

A speech or article is not an overt act. Americans have always assumed the right of unrestricted

discussion of public affairs. It is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order. Tyrannical government can only be fought by armed rebellion or the moulding of public opinion by free speech and free press perfectly unrestrained on every subject within the field of government.

In *Reynolds* v. *United States*, 98 U. S., 163, this Court approved the statement prepared by Thomas Jefferson that:

> "To suffer the civil magistrate to intrude his power into the field of opinion, or to restrain the profession or propagation of principles, on supposition of their ill tendency, is a dangerous fallacy which at once destroys all liberty because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own. It is time enough for the rightful purpose of civil government for its officials to interfere when principles break out into overt acts against peace and good order."

Though speaking of religion at the time, the same policy applies to opinions on other subjects. The expression of an honest opinion on a public question is the doing of a public service. We are bound to respect the honesty, and weigh the arguments fearlessly.

Thomas Erskine said ("Erskines Speeches," Vol. II, p. 104, Ed. 1810, Paine Case):

> "I maintain that opinion is free, and that conduct alone is amenable to law."

A man who points out wherein the country is making a blunder, or forgetting its ideals and justice, should not be jailed even in war time, even if perchance he is wrong in his belief, or cannot convince a majority that he is right. If we are really a government of and by discussion, we should be ready to listen to the most unpopular argument on any question of public policy at any time, and more so when that policy of sending troops into Russia for any purpose, by the sole action of the executive, is in the opinion of many an unconstitutional action on the part of the executive.

Even if the expression of an opinion on a public question should be injurious to the public welfare, the prevention of its free expression is unconstitutional, and an abridgment of free speech and free press, no matter what the method is, the pretext or how hidden by verbiage its denial. Patriotism, like charity, covers a multitude of sins as well as virtues, and under its cloak greater liberties may be lost with the consent or acquiescence of the people than by any other means, not excepting military despotism, for despotism brings rebellion, while patriotism usually finds acquiescence.

In the famous Virginian "Bill of Rights," unanimously adopted June 12, 1776, is this clause:

> "The freedom of the press is one of the bulwarks of liberty, and can never be restrained but by despotic government."

Cooley, in his "Constitutional Limitations" (7th Ed., p. 604), said:

> "The liberty of the press might be rendered a mockery and a delusion and the phrase itself a by-word, if, while every man was at liberty to publish what he believes,

> the public authorities might nevertheless punish him for harmless publication. * * * Their purpose has evidently been to protect parties in the free publication of matter of public events and public measures, and to enable every citizen at any time to bring the Government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. * * * The evils to be prevented were not the censorship of the press merely, but any action of the Government by means of which it might prevent such free and general discussion of public matters as seem absolutely essential to prepare the people for an intelligent exercise of their rights as citizens."

I would commend in this discussion the immortal words of the Areopagitica of Milton:

> "Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licencing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter? * * * What a collusion is this, when we are exhorted by the wise Man to use diligence, to seek for wisdom as for hidden treasures, early and late, that another order shall enjoin us to know nothing but by statute."

The spirit of Jefferson and his faith in the Republic are revealed in his inaugural address, March 4, 1801, when he said:

> "If there be any among us who wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opin-

ion may be tolerated, where reason is left free to combat it."

And let me quote another President—President Wilson—who, in his book "The New Freedom," goes to the heart of the matter:

> "I believe that the weakness of the American Character is that there are so few growlers and kickers among us. We have forgotten the very principle of our origin if we have forgotten how to object, how to resist, how to agitate, how to pull down and build up even to the extent of revolutionary practices, if it be necessary, to readjust matters.
>
> We must learn," he says, "we free men, to meet as our fathers did, somehow, somewhere, for consultation. What are the right methods of politics? Why the right methods are those of public discussion. The only thing that can ever make a free country is to keep a free hopeful heart under every jacket in it. The whole purpose of democracy is that we may hold counsel with one another so as not to depend upon the understanding of one man, but to depend upon the common counsel of all."

In the *Milligan* case, 71 U. S., 2, this Court said:

> "Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arrive, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of con-

stitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man, than that any of its provisions can be suspended during any of the great exigencies of Government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

* * * But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true it could be well said that a country preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily it is not so."

The question of our intervention in Russia is a matter of public policy debated in Congress and throughout the country.

We are still a government of and by discussion, and absolute freedom of speech is the only basis upon which the Government can stand and remain free.

Sections 3 and 4 of Title I of the Act of June 5th, 1917, as amended May 16th, 1918 (commonly known as the Espionage Law) is unconstitutional,

if construed and applied so as to punish any individual for speaking or publishing his opinion on any public measure of the Government.

The conviction in the present case must be set aside either because the law is unconstitutional or has been erroneously applied.

In an address issued by the Continental Congress to the inhabitants of Quebec on October 28th, 1774 (see "Journal of the Continental Congress," Vol I, p. 108, Ed. 1904), it said:

> "The last right we shall mention, regards the freedom of the press. The importance of this consists * * * whereby oppressive officials are shamed or intimidated into more honorable or just modes of conducting affairs."

CONCLUSION.

It is respectfully submitted that the judgment of conviction should be reversed and indictment dismissed.

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

JACOB ABRAMS, ET AL., PLAINTIFFS IN error,
v.
THE UNITED STATES. } No. 316.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF THE UNITED STATES.

QUESTIONS INVOLVED.

While there are in the record eight assignments of error (R. 258–262), the questions raised therein resolve themselves to two, and to two only, viz:

First. Was the enactment by Congress of section 3, Title I, of the act of June 15, 1917, in the respects in which it was amended by the act of May 16, 1918, 40 Stat. 553, clearly in excess of any power conferred upon the Congress by the Constitution?

Second. Was there any evidence in the case at bar to go to the jury of a violation of that act by the plaintiffs in error?

THE STATUTE.

The portions of the statute material to the discussion of these questions are as follows:

> Whoever, when the United States is at war, shall * * * wilfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of United States * * * or any language intended to bring the form of government of the United States * * * into contempt, scorn, contumely, or disrepute, or shall wilfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, * * * or shall wilfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of anything or things, product, or products, necessary or essential to the prosecution of the war in which the United States may be engaged with intent by such curtailment to cripple or hinder the United States in the prosecution of the war * * * shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.

STATEMENT OF THE CASE.

The indictment.

The indictment (R. 2–19) contained four counts covering the four different clauses of the statute, and all for conspiracy. The first charged a conspiracy, while the United States was at war, wilfully to utter,

print, write, and publish disloyal, scurrilous, and abusive language about the form of government of the United States by printing, publishing and circulating among the people of the Borough of Manhattan a leaflet in the English and a leaflet in the Yiddish language, copies of which were attached to the indictment, and made a part thereof. The main overt acts charged were the printing and circulation of these leaflets. The second count charged a conspiracy, while the United States was at war, wilfully to utter, print, write, and publish language intended to bring the form of government of the United States into contempt, scorn, contumely, and disrepute by the same means, and with the same overt acts. The third count charged a conspiracy wilfully to utter, print, write, and publish language intended to incite, provoke, and encourage resistance to the United States in its war with Germany by the same means and with the same overt acts. The fourth count charged a conspiracy, while the United States was at war, wilfully by utterance, writing, printing, and publication to urge, incite, and advocate curtailment of production of things and products, to wit, ordnance and ammunition, necessary and essential to the prosecution of the war, with intent by such curtailment to cripple and hinder the United States in the prosecution of said war, by the same means and with the same overt acts.

The leaflets.

The leaflets whose publication and circulation were complained of were as follows, the second or Yiddish being translated:

THE HYPOCRISY OF THE UNITED STATES AND HER ALLIES.

"Our" President Wilson, with his beautiful phraseology, has hypnotized the people of America to such an extent that they do not see his hypocrisy.

Know, you people of America, that a frank enemy is always preferable to a concealed friend. When we say the people of America, we do not mean the few Kaisers of America, we mean the "People of America." You people of America were deceived by the wonderful speeches of the masked President Wilson. His shameful, cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington and vicinity.

The President was afraid to announce to the American people the intervention in Russia. He is too much of a coward to come out openly and say: "We capitalistic nations can not afford to have a proletarian republic in Russia." Instead, he uttered beautiful phrases about Russia, which, as you see, he did not mean, and secretly, cowardly, sent troops to crush the Russian revolution. Do you see how German militarism combined with allied capitalism to crush the Russian revolution?

This is not new. The tyrants of the world fight each other until they see a common

enemy—working class—enlightenment—as soon as they find a common enemy they combine to crush it.

In 1815 monarchic nations combined under the name of the "Holy Alliance" to crush the the French Revolution. Now militarism and capitalism combine, though not openly, to crush the Russian revolution.

What have you to say about it?

Will you allow the Russian revolution to be crushed? You: Yes, we mean you the people of America!

The Russian revolution calls to the workers of the world for help.

The Russian revolution cries: "Workers of the world! Awake! Rise! Put down your enemy and mine!

Yes, friends, there is only one enemy of the workers of the world and that is capitalism.

It is a crime, that workers of America, workers of Germany, workers of Japan, etc., to fight the workers' republic of Russia.

Awake! Awake, you workers of the world! Revolutionists

P. S.—It is absurd to call us pro-German. We hate and despise German militarism more than do your hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House.

WORKERS—WAKE UP.

The preparatory work for Russia's emancipation is brought to an end by his Majesty, Mr. Wilson, and the rest of the gang; dogs of all colors!

141704—19—2

America, together with the Allies, will march to Russia, not, "God forbid," to interfere with the Russian affairs, but to help the Czechoslovaks in their struggle against the Bolsheviki.

Oh! ugly hypocrites; this time they shall not succeed in fooling the Russian emigrants and the friends of Russia in America. Too visible is their audacious move.

Workers, Russian emigrants, you who had the least belief in the honesty of our Government, must now throw away all confidence, must spit in the face of the false, hypocritic, military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of tne war. With the money which you have loaned, or are going to loan them, they will make bullets not only for the Germans but also for the workers' Soviets of Russia. Workers in the ammunition factories, you are producing bullets, bayonets, cannon to murder not only the Germans but also your dearest, best, who are in Russia and are fighting for freedom.

You who emigrated from Russia, you who are friends of Russia, will you carry on your conscience in cold blood the shame spot as a helper to choke the workers' Soviets? Will you give your consent to the inquisitionary expedition to Russia? Will you be calm spectators to the fleecing blood from the hearts of the best sons of Russia?

America and her allies have betrayed (the workers). Their robberish aims are clear to all men. The destruction of the Russian

Revolution, that is the politics of the march to Russia.

Workers, our reply to the barbaric intervention has to be a general strike! An open challenge only will let the Government know that not only the Russian worker fights for freedom, but also here in America lives the spirit of revolution.

Do not let the Government scare you with their wild punishment in prisons, hanging and shooting. We must not and will not betray the splendid fighters of Russia. Workers, up to fight.

Three hundred years had the Romanoff dynasty taught us how to fight. Let all rulers remember this, from the smallest to the biggest despot, that the hand of the revolution will not shiver in a fight.

Woe unto those who will be in the way of progress. Let solidarity live!

THE REBELS.

The evidence.

(*a*) The conspiracy to print, publish, and circulate ıe said leaflets and the actual indiscriminate circu-ıtion of them, not only among the people of the orough of Manhattan, but in places and at public ieetings where the character of the readers would be ıch as to lend the greatest effect to the more extreme ıd passionate statements in them is admitted or ot denied. (R. 170, 171, 198, 211, 212, 213, 224, 5, 23–29.)

(*b*) In addition there was undisputed evidence that ey were printed and circulated in a furtive, secretive

manner consistent with a knowledge that the action was contrary to law, and with an intent to violate the law.

(*c*) In so far as the actual intent with which the defendants printed and circulated the leaflets is material, there is nothing in their own testimony to rebut the inference that they intended in the leaflets to refer to the form of government of the United States (as they understood it and asserted it to be), to advocate resistance to, and overthrow of that form of government by force, to bring it into scorn and contempt, to interfere with its success in the war, so far as they could, and for that purpose to incite complete curtailment of production of all munitions of war. (R. 164, 174, 175, 183, 188, 191, 201, 207.)

The defendants, with the exception of Lipman, were all anarchists of the force group, or circle, whose religion is (as they claim) to establish by force a social organization where there shall be no constitution or laws in the sense embodied in the form of government of the United States. Lipman was a Socialist, but since he was a strong adherent of the Bolshevist or Soviet Government of Russia, it will be presumed that he was a Socialist of that type and believed in the establishment by force of a form of government where all social and political functions are owned and operated by a minority class, called the proletariat. All of the defendants were opposed to war of every kind, no matter how just, if waged by a "capitalistic" form of government, to which type the United States of America belonged (in their judgment). In

addition they were all Russian aliens, none of whom had made any attempt to become a citizen of the United States of America because, it may be presumed, they despised its form of government, and it may with equal propriety be presumed on this record that their true and loyal allegiance was, not to the Government of the United States of America, but to the Soviet Government of Russia. The jury, being the sole judges of the true meaning of these leaflets and of the true intent with which they were published and circulated, could properly take all the above matters into consideration in reaching their verdict.

ARGUMENT.

I.

The enactment of section 3, Title I, of the Act of June 15, 1917, in the respects in which it was amended by the Act of May 16, 1918, was within the constitutional powers of Congress.

(*a*) It is the settled doctrine of this court, established by many decisions, that before an act of Congress will be held unconstitutional there must be a clear showing made that the subject matter and the provisions thereof are outside of any power specifically granted to Congress by the Constitution, or implied in the very structure of the form of government established thereby, or reasonably adapted to the efficient exercise of any such power specifically or impliedly granted. With the policy or propriety of the legislation, either generally or as adapted to

the particular conditions which induced its passage, this court, so it has often declared, has nothing to do. Of such matters Congress is the sole judge.

(*b*) The constitutional power under which the legislation in question may be safely justified and on which it rests is inherent in the very nature of the Government established by the Constitution, as it is inherent in every Government worthy of the name, and is this, namely, the power of self-preservation. After severe trials and with the deepest consideration the people of the United States established a form of government in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity. Through equally severe trials they have maintained it in the form in which it was constituted. Necessarily it does not contain within itself the germ of its own destruction, and from the same necessity it follows that Congress is implicitly vested with power to enact legislation necessary in its judgment to preserve the form of government by the Constitution and laws established and reasonably adapted to this great end.

This form of government is, first, the people of the United States as the source, fundamental basis, and resource; second, the Congress, the Executive, and the Judiciary as the representative organs of the people, functioning in the fields marked out by the

Constitution, and subject to the control of the people by methods specifically designated in the Constitution and easily available. In addition, that there might be no chance of defeating the will of the people when soberly determined and clearly expressed, the Constitution itself provided a satisfactory and available method for its own amendment to any extent and in any manner which should approve itself after due deliberation to a clear majority of the whole people.

This is the form of government of the United States which Congress is empowered by the Constitution to preserve in so far as legislation is adapted to this end, and this is the form of government to which the amendment of May 16, 1918, refers.

(*c*) These principles we suppose to be so axiomatic that this court would not look with favor on any extended citation of authority in support of them. Certain decisions, however, more particularly bearing on the case at bar may properly be referred to.

In *Anderson* v. *Dunn* (1821), 6 Wheat. 204, this court unanimously held that Congress had an implied power to punish contempt against its dignity and authority. It is said (p. 229):

> that such an assembly should not possess the power to suppress rudeness, or repel insult, is a supposition too wild to be suggested.

In *United States* v. *Hudson* (1812), 7 Cranch. 32, in holding that the courts of the United States had no

common law, inherent jurisdiction over a seditious libel, the court said (p. 34):

> Certain implied powers must necessarily result to our courts of justice from the nature of their institution. But jurisdiction of crimes against the state is not among those powers. To fine for contempt—imprison for contumacy—inforce the observance of order, &c., are powers which can not be dispensed with in a court, because they are necessary to the exercise of all others; and so far our courts no doubt possess powers not immediately derived from statute.

And this view is affirmed in *ex parte Terry* (1888), 128 U. S. 289, 302–304, with the citation of many authorities.

In *in re Neagle* (1889), 135 U. S. 1, it was held that the Executive had inherent power to protect judges of the United States courts in the performance of their duties. Judge Miller, delivering the opinion of the court, said (p. 59):

> It would be a great reproach to the system of government of the United States, declared to be within its sphere sovereign and supreme, if there is to be found within the domain of its powers no means of protecting the judges, in the conscientious and faithful discharge of their duties, from the malice and hatred of those upon whom their judgments may operate unfavorably.

In *ex parte Siebold* (1879), 100 U. S. 371, and in *ex parte Yarborough* (1883), 110 U. S. 651, it was held that Congress could enact statutes to prevent

and punish frauds at elections for Members of the House of Representatives. In the latter case it is said (p. 667):

> If the Government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other.

In *Logan* v. *United States* (1891), 144 U. S. 263, and in *Motes* v. *United States* (1899), 178 U. S. 458, it was held that Congress had implied power to protect citizens of the United States in their relations with the constituted authorities, the court saying in the *Logan case*, page 295:

> The United States are bound to protect against lawless violence all persons in their service or custody in the course of the administration of justice.

In so far as protection to officers of the United States is concerned, this had been previously affirmed in *Tennessee* v. *Davis* (1879), 100 U. S. 257, 262, 263. It is said in this case:

> A more important question can hardly be imagined. Upon its answer may depend the

possibility of the general Government's preserving its own existence.

In *Nishimura Ekiu* v. *United States* (1891), 142 U. S. 651, 659, it is said:

> It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. Vattel, lib. 2, secs. 94, 100; 1 Phillimore (3d ed.) c. 10, sec. 220. In the United States this power is vested in the National Government, to which the Constitution has committed the entire control of international relations, in peace as well as in war.

These views are affirmed in the most vigorous manner in *The Chinese Exclusion Case* (1888), 130 U. S. 581, 606–609, and applied to the deportation of aliens in *Fong Yue Ting* v. *United States* (1892), 149 U. S. 698, 707.

In *in re Debs* (1894), 158 U. S. 564, the power of the Executive and of the courts to restrain and put down organized obstruction of and interference with the lawful functions of the Government was maintained, and it was said (in answer to the claim that such action must be confined to criminal prosecutions after the event, p. 582):

> But there is no such impotency in the National Government. The entire strength of the Nation may be used to enforce in any part

> of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the Army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws.

So as the real basis of the *Selective Draft Law Cases*, 245 U. S. 366, is the thought that the Nation's right of self-preservation must of necessity be paramount to any claimed right of the individual to the exercise of his rights in opposition to the necessity of the State.

It should be noted that the power of Congress to define the offence of treason—the most dangerous of all to the safety of the State—is only granted in the Constitution by implication in section 3 of Article 3. Clearly it was supposed that the power to define such an offense and to punish it was inherent in Congress, the only thing deemed necessary being the limitation of this inherent power.

So the offense of a seditious conspiracy was defined and punished by the act of July 31, 1861, 12 Stat. 284, and is placed in the Revised Statutes and the Criminal Code with treason among the offenses against the existence of the Government (R. S. sec. 5336, Cr. Code, sec. 6). This statute was before this court in *Baldwin* v. *Franks* (1886), 120 U. S. 678,

692–694, and evidently no member of the court entertained any doubt of the power of Congress to enact it.

This statute, it will be noted, makes the bare conspiracy an offense, and does not require any overt act. It is true that the conspiracy dealt with is one to oppose the Government by deed, rather than by words. But it is too late to argue, since the decisions of this court in *Schenck* v. *United States*, 249 U. S. 47, *Frohwerk* v. *United States*, 249 U. S. 204, and *Debs* v. *United States*, 249 U. S. 211 (see also *Toledo Newspaper Company* v. *United States*, 247 U. S. 402, 419), that the publication of words may not be considered by Congress equivalent to deeds for this purpose. In *Schenck's case* it is said (p. 52):

> It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The statute of 1917 in § 4 punishes conspiracies to obstruct as well as actual obstruction. If the act (speaking or circulating a paper), its tendency and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime.

And in *Frohwerk's case* (p. 206):

> * * * we have decided in *Schenck* v. *United States*, that a person may be convicted of a conspiracy to obstruct recruiting by words of persuasion.

(*d*) It having been decided in the *Schenck, Frohwerk* and *Debs cases* that the clauses of section 3 of Title I of the act of June 15, 1917, creating the offenses of wilfully causing or attempting to cause insubordination and disloyalty in the military forces of the United States, or obstructing the recruiting and enlistment service of the United States, although the offense as so defined includes mere publication of words, are constitutional, it follows necessarily as a corollary thereto that the last two clauses of the amendment of May 16, 1918, viz, those defining the offenses of wilfully publishing language intended to incite resistance to the United States, or by such publication, inciting curtailment of the production of munitions of war, are equally constitutional. There is clearly no difference in kind, it may be said there is no difference in degree, between causing insubordination in the military forces and obstructing the recruiting service of the United States on the one hand and inciting resistance to the United States or the curtailment of production of munitions of war on the other. They are merely two different forms of the same dangerous activities.

(*e*) As to the first two clauses of the act of May 16, 1918, viz, those defining the offense of wilfully publishing scurrilous, abusive, or disloyal language about the form of government of the United States, or language intended to bring that form of government into contempt, scorn, contumely, and disrepute, they simply define the offense of seditious libel, confining

it, however, to time of war, when, as this court said in *Schenck's case:*

> Many things which might be said in time of peace are such a hindrance to its (the Nation's) effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right.

We shall show later, when speaking of the liberty of the press, that the offense of seditious libel was well known to the Common Law prior to and at the time the Constitution was adopted, and that its existence as a common law offense was distinctly and in the most public manner recognized in this country prior to and immediately following the adoption of the Constitution. It is an offense, like treason and seditious conspiracy, of a nature directly affecting the existence of the Government itself. The act of May 16, 1918, however, does not adopt the common law offense in its full stature, but limits it to publications concerning the very form of government itself, as distinguished from criticism, no matter how violent and abusive, of public officials. As so limited there can, it is submitted, be no doubt of the power of Congress to enact it, a power implied from the necessity of protecting the form of government lawfully established from seditious attacks.

II.

The act of May 16, 1918, does not violate Article I of the amendments of the Constitution relating to the freedom of the press.

(*a*) The language of the amendment is:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

It will be at once noticed that whereas it is provided that Congress *shall make no law* respecting the establishment of religion or prohibiting its free exercise, in regard to the freedom of the press it is merely provided that the right thereto shall not be *abridged*. This provision clearly refers us back to the law prior to the adoption of the Constitution, and intends to fix the liberty of the press by that law. What such liberty was at the time of the adoption of the Constitution, that it shall continue to be, no more, no less. This meaning is attributed to the Constitution by the committee of the House of Representatives reporting on the alien and sedition laws in 1799 (American State Papers, vol. 1, Miscellaneous, 181, 183). It is inconceivable that a committee of the House would have dared at that time to give an incorrect interpretation of the meaning of the Constitution on such an important point.

(*b*) It is not, however, necessary to adopt the view of Blackstone (Vol. IV, pp. 151, 152) and Kent (Vol.

II, p. 17), referred to by this court in *Patterson* v. *Colorado*, 205 U. S. 454, 462, viz, that the liberty of the press at the time the Constitution was adopted consisted merely in freedom from censorship or licensing, although this view has great authority in its favor. The better way to look at the matter, in our judgment, is that of Sir James Stephen in his *History of the Criminal Law of England*, vol. 2, pp. 348, 349, where, after citing Lord Mansfield and Lord Kenyon as defining liberty of the press in conformity with Blackstone's definition and intimating that such was the law, he states that such, however, was not public opinion, and hence "the law and common practice had come into direct contradiction to each other." In other words, it was a transition period, and it would be unfair to the makers of the Constitution to suppose that they meant to adopt a view which the English people were about to discard. It is, however, proper to claim that no liberty of the press was conceived of which included the unlimited right to publish a seditious libel. No claim of that sort was ever made by any respectable person. Sir James Stephen defines the offense in his *Digest of the Criminal Law*, articles 91 and 93, in a manner which received the approval of all the judges (per Cave, J., in *Regina* v. *Burns* (1886), 16 Cox Cr. Cas. 355, 359), viz:

> Every one commits a misdemeanor who publishes verbally or otherwise any words or any document with a seditious intention.

A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the Government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in church or state by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill will and hostility between different classes of such subjects.

An intention to show that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the Government or constitution as by law established, with a view to their reformation, or to excite Her Majesty's subjects to attempt by lawful means the alteration of any matter in church or state by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill will between classes of Her Majesty's subjects, is not a seditious intention.

It is clear that, in so far as the common law of ngland was concerned, the liberty of the press ever did and does not now include the absolute ght to publish a seditious libel. It is equally clear at it was not supposed to go to this extent by any rson in this country at the time the Constitution as adopted. The case of Zenger, reported 17 State

Trials 675 (1735), was a celebrated one and is interestingly described by Fiske in his *History of the Dutch and Quaker Colonies*, vol. 2, pp. 238–248. Zenger was successfully defended by able counsel, but neither that counsel nor the historian thought of making the claim that the liberty of the press was a bar to any prosecution at all. Their utmost claims were that the truth can be given in evidence and that the jury are entitled to bring in a general verdict. So in *Crosswell's case* (1804), 3 Johns Cas. 340, Alexander Hamilton, who represented the defendant and who had shown his courage in *Rutgers* v. *Waddington*, claimed no more than his namesake in *Zenger's case* (see p. 353), and Kent, J., who thought that the truth could be given in evidence and that the jury could return a general verdict, made no claim that there was complete immunity for seditious libel (see p. 393). So in *Respublica* v. *Dennie* (1805), 4 Yeates 267, Yeates, J., with the approval of two other justices, charged the jury (p. 270):

> It is no infraction of the law to publish temperate investigations of the nature and forms of government. * * * But there is a marked and evident distinction between such publications, and those which are plainly accompanied with a *criminal intent*, deliberately designed to unloosen the social band of union, totally to unhinge the minds of the citizens, and to produce popular discontent with the exercise of power, by the known constituted authorities. These latter writings are subversive of all government and good order.

He also quotes from Hamilton in *Crosswell's case, supra:*

"The liberty of the press consists in publishing the truth from *good motives* and for *justifiable ends*, though it reflects on government or on magistrates."

Reference may also be made to the cases of Lyon (1798), Wharton's State Trials 33, Cooper (1800), ib. 659, especially 670, Callender (1800), ib. 688, and Haswell (1800), ib. 684, as representing the views of three judges of the United States courts.

It is therefore quite clear that the power to punish the publication of language dangerous to the existence of the Government of the United States, impliedly granted by the Constitution, is not taken away by Article I of the Amendments. Upon this subject the Chief Justice, delivering the opinion of this court in *Toledo Newspaper Company* v. *United States*, 247 U. S. 402, 419, said:

> *The asserted inapplicability of the statute under the assumption that the publications complained of related to a matter of public concern and were safeguarded from being made the basis of contempt proceedings by the assuredly secured freedom of the press.*
>
> We might well pass the proposition by, because to state it is to answer it, since it involves in its very statement the contention that the freedom of the press is the freedom to do wrong with impunity and implies the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all, including

> that of the press, depends. The safeguarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom, therefore, does not and can not be held to include the right virtually to destroy such institutions. It suffices to say that, however complete is the right of the press to state public things and discuss them, that right, as every other right enjoyed in human society, is subject to the restraints which separate right from wrong doing.

Indeed the decisions of this court in the *Schenck*, *Frohwerk*, and *Debs cases* seem to determine the extent of the provision in Article I relating to the liberty of the press in a manner decisive, to all intents and purposes, of the claim made in the case at bar. As stated above, they certainly do so as to the last two clauses of the act of May 16, 1918. The first two clauses, however, differ merely in degree, not in kind, from the last two. There can be no doubt that they define an offense which was fully included in the definition of a seditious libel at common law. To publish scurrilous, abusive, disloyal language about the *form of government* of the United States, as distinguished from the particular individuals who may happen to be in power, or language intended to bring this *form of government* into contempt, scorn, contumely, or disrepute, and to do this in time of war, is, surely, to do something in excess of and outside of any right to the freedom of the press, as that right was understood at the time

the Constitution was adopted or has ever been understood since. To publish in time of war language of the said character or intent with reference to the very structure of the Government is, surely, to attack the existence of the Government, and to punish it is, surely, an exercise of the right of self-preservation.

III.

There was evidence to go to the jury that the defendants conspired to violate the act of May 16, 1918.

(*a*) As has been stated above, the conspiracy and the doing of the overt acts are admitted. The question is therefore resolved to this, viz: Could the jury properly find, on the evidence before them, that the leaflets set out above were—

(1) Disloyal, scurrilous, and abusive language about the form of government of the United States;

(2) Language intended to bring said form of government into contempt, scorn, contumely, and disrepute;

(3) Language intended to incite, provoke, and encourage resistance to the United States in its war with Germany;

(4) Language urging, inciting, and advocating curtailment of production of munitions of war with intent to cripple and hinder the United States in its war with Germany?

(*b*) The jury have a particularly important function in cases of this sort dealing with published writings. Even before the passage of Fox's Libel Act in 1791, it was admitted by those who took the most limited

view of the power of the jury that they were sole judges of the truth of the innuendoes. (Stephen's History of Criminal Law, Vol. 2, e. g., p. 329, referring to Stockdale's Case.) After the act in *Rex* v. *Burdett*, 1 State Trials, n. s., 1, 111, Best, J., told the jury:

> With respect to whether this was a libel, I told the jury that the question, whether it was published with the intention alleged in the information, was peculiarly for their consideration; but I added that the intention was to be collected from the paper itself, unless the import of the paper were explained by the mode of publication, or any other circumstances. I added that, if it appeared that the contents of the paper were likely to excite sedition and disaffection, the defendant must be presumed to intend that which his act was likely to produce.

The jury in the case at bar have by their verdict found that the leaflets offered in evidence before them had the meaning and were published with the intent ascribed to them in the indictment. This finding will not be disturbed on a writ of error if it be one which could possibly be made by reasonable men.

The general rule as to the province of the jury is thus stated by Mr. Justice Baldwin in *Hepburn* v. *Dubois*, 12 Peters 345, 376:

> If this court can comprehend what these rules are, or promulgate them in intelligible language, they are these: "That where the evidence in a cause conduces to prove a fact

> in issue before a jury, it is competent in law to establish such fact; a jury may infer any fact from such evidence, which the law authorizes a court to infer, on a demurrer to the evidence; after a verdict in favor of either party, on the evidence, he has a right to demand of a court of error, that they look to the evidence for only one purpose, and with the single eye to ascertain whether it was competent in law to authorize the jury to find the facts which make out the right of the party, on a part, or the whole of his case. If, in its judgment, the appellate court should hold, that the evidence was competent, then they must found their judgment on all such facts as were legally inferrible therefrom, in the same manner, and with the same legal results, as if they had been found and definitely set out in a special verdict. So, on the other hand, the finding of the jury on the whole evidence in a cause, must be taken as negativing all facts, which the party against whom their verdict is given, has attempted to infer from, or establish by, the evidence."

To the same effect is the decision rendered by this court in *Carter* v. *Ruddy*, 166 U. S. 493, 498:

> Of course, the verdict of the jury determines the questions of fact adversely to the plaintiff and it is not the province of this court to review such determination or to examine the testimony further than to see that there was sufficient to justify the conclusions reached by the jury.

To the same effect is the decision of this court in *Standard Oil Company* v. *Brown*, 218 U. S. 78, 86:

> But what the facts were in such regard, and what conclusions were to be drawn from them, were for the jury and can not be reviewed here.

(*c*) Let, then, the leaflets be analyzed in the light of the evidence before the jury, of those surrounding circumstances of time, place, and affairs which were matters of common knowledge, and of the peculiar function of the jury as to the true meaning and intent of the papers.

They were published in August, 1918, at a critical period of the war when the Nation needed the concentration and cooperation of all its forces of men and material to reach the result which it happily attained. They were circulated in the largest city and port in the country, where men and munitions of war were constantly assembled in large numbers for transportation, and where manufacturing of every kind of material necessary for the war was carried on on a great scale. The defendants were anarchists or socialists of the force type, and devoted adherents of the soviet government of Russia, itself a government established and maintained by force. Such were the atmosphere and personalities surrounding the circulation of these leaflets.

NOTE.[1]—The English one (Exhibit A, R. 16) is headed: "The Hypocrisy of the United States and

[1]Wherever, in what follows, a meaning is attributed to the language of these papers, it is meant that the jury might reasonably have attributed such a meaning to them.

Her Allies," and is signed "Revolutionists." The heading means that the United States Government, as regards its regular functioning in the war, is that despicable character, a hypocrite, assuming a virtue, viz, of establishing democracy and freeing peoples which it does not have.

The first paragraph calls the President a hypocrite, and implies that, though constitutionally holding his office, he is not the President of the writers, nor, perhaps, of the "people" whom they address.

The second paragraph amplifies this "hypocrisy," and contrasts the "People of America" with "the few Kaisers of America," the latter presumably being the persons who exercise the real power under the form of government established in this country. It also speaks of "the hypocrisy of the plutocratic gang in Washington," which presumably includes Congress and the other functionaries of the Government in that city.

The third paragraph states that the President was afraid to announce to "the American people" the intervention in Russia, this in face of the fact that the decision to send the troops was announced in the public press August 5, 1918. It then gives the reason for his "cowardice," viz, he was afraid to say, "We capitalistic nations can not afford to have a proletarian republic in Russia;" meaning that the form of government in the United States is "capitalistic," i. e., an oligarchy of the rich; that the true form of government is a proletarian republic, i. e., an oligarchy of the poor, and that the real reason for

the intervention in Russia was the fear that if an oligarchy of the proletariat were ever established there, it would, like Pharaoh's lean kine, swallow up the established governments in other countries, including this. In brief, the form of government in this country is capitalistic, and "the workers" should see to it at once that it be made a proletarian republic by any means.

The fourth paragraph speaks of "the tyrants of the world" and their "common enemy" "working class enlightenment" which they combine to crush. The meaning is that the form of government in the United States is tyrannical, that it does not represent working class enlightenment, but, on the contrary it opposes it and desires to crush it.

The fifth paragraph states that the Holy Alliance crushed the French Revolution, and in the same manner "militarism and capitalism" are now combined, though not even openly, to crush the Russian Revolution; meaning that the form of government of the United States is not only militaristic and capitalistic, but meanly and aggressively so.

The moral of these statements is then pointed in six brief, glaring, and passionate paragraphs. The readers are first asked what they have to say about it, and whether they will allow the Russian Revolution to be crushed; meaning whether they will allow the capitalistic government of the United States to crush the much finer proletarian republic of Russia; and they are vehemently reminded in the language

of Job: "Indeed ye are the people and wisdom died with you."

It is then stated that "The Russian Revolution" calls to the workers of the world for help and cries to them "Awake! Arise! Put down your enemy and mine!" meaning that the workers of the United States should arise and put down by force the hypocritical, aristocratical, oligarchical, capitalistic government in this country.

To make this clear, it is added that the workers have only one enemy, namely, "Capitalism;" meaning that the form of government of the United States was the only enemy of the working man.

The last paragraph states that "it is a crime" that the workers of this country should fight the "Workers' Republic of Russia;" meaning that it is a crime to support the Government of the United States as at present established by law.

The fitting close to this discord is "Awake! Awake, You Workers of the World!" Signed "Revolutionists"; meaning that the workers should arise and put down by force the hypocritical, capitalistic, reactionary government established in the United States.

The Yiddish leaflet (Exhibit B, R. 18) is headed, "Workers—Wake Up."

The first paragraph states that Russia's emancipation has been brought to an end by "his Majesty, Mr. Wilson and the rest of the gang; dogs of all colors"; meaning that the President, while engaged in the exercise of his lawful powers under

the Constitution, viz., faithfully executing the laws declaring war on Germany and Austria and acting as Commander in Chief of the Army and Navy, is a tyrant, and as such is preventing the establishment of the better and contrasted form of Government, viz., the Soviet Government of Russia.

The second and third paragraphs harp upon the same string of the hypocrisy of this Government in its intervention in Russia.

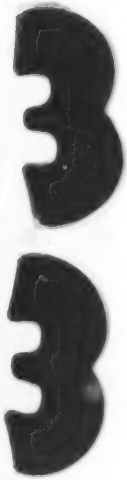
The fourth paragraph calls upon the Russian emigrants, provided they are also "workers," to throw away their confidence in the honesty of the Government of the United States, to "spit in the face" of the military propaganda which has deceived them, calling forth their help in the prosecution of the war, and reminds them that their money, and labor in so far as it is employed in ammunition factories, are producing munitions of war to "murder" their dearest and best fighting for freedom; meaning that they should throw off their allegiance to this country (owed even by an alien, *Carlisle* v. *United States* 16 Wall. 147), and should violently oppose the war, which was in substance a war against the Soviet republic.

The fifth and sixth paragraphs refer to "the shame spot" of "a helper to choke the Workers' Soviets," to the "fleecing blood from the hearts of the best sons of Russia," to the betrayal of the workers by America, and to its robberish aims; meaning that the Government of the United States as by law established has been and is guilty of these things.

The seventh paragraph calls the action of the Government of the United States "barbaric," and specifically advocates "a general strike." This general strike is to be an open challenge to the Government of the United States and is to show it that the Russian Worker "fights for freedom," and that in this country lives "the spirit of revloution"; meaning that a general strike of all workers should be had in order to stop the production of munitions, and to overthrow by force the form of government of the United States as by law established.

The eighth paragraph urges the "workers" not to be scared by the wild punishment in prisons, hanging and shooting, and not to betray the splendid fighters of Russia, ending with the exhortation "Workers, up to fight"; meaning that the punishments inflicted by the Government of the United States in the due course of law under the Constitution were "wild," i. e., without reason, savage, and that the "workers" should consequently destroy that Government as the fighters of the Soviets had destroyed the Kerensky government, namely by force of arms.

The ninth paragraph states that the Romanoff dynasty had taught "us" how to fight, and admonishes all rulers that the hand of the revolution will not shiver in a fight; meaning that the "workers" should overthrow by force of arms the despotic government established in the United States in the same manner and for the same reasons as in the overthrow by the "workers" of the Romanoff dynasty.



The last paragraph cries out, "Woe unto those who will be in the way of progress," and the whole is signed "The Rebels;" meaning that unless the Government of the United States voluntarily removes itself to make way for a soviet form of government, it will be removed by a rebellion of the "workers" instituted and carried on by force of arms.

Attention should also be called to Exhibits 11 and 13 (R. 250–255). A detailed analysis of them would unduly lengthen this brief, but particular reference is made to the last paragraph of Exhibit 11 and to the last three paragraphs of Exhibit 13.

The above analysis of the leaflets in question, and deduction of their meaning as the jury was entitled to find it, show beyond question that they refer to and deal with the form of government of the United States, that they would naturally incite resistance to the United States in its war with Germany, and that they incite curtailment of production of munitions of war in such a manner and at such a time as naturally to cripple the United States in the prosecution of the war. The burden of their song is that the United States is a "capitalistic" form of government, i. e., an oligarchy of plutocrats, that it is hypocritical in claiming, as it does in the preamble to the Constitution, to be a democracy, that it is tyrannical, despotic, and militaristic, the enemy of the working man, whom it intends and has combined to crush in the interests of plutocracy and capitalism; that, consequently, it should be opposed by general strikes and by force of arms so that its troops may be kept busy

dealing with internal, civil war, rebellion, or revolution. To say that these leaflets only attack Mr. Wilson's administration of the Government, and criticize it for illegal, unconstitutional actions, was mere sophistry in the eyes of the jury, and only increased the seriousness of the offense by showing that the authors of these leaflets, though bold enough when printing then in a basement and circulating them from disguised headquarters, did not have the courage of their convictions (unless in the case of the woman, Mollie Steimer, see R. 218, 221, 222), when put to the ordeal of a solemn, public trial. The jury thought that no one could read these papers and not draw the conclusion that the authors of them regarded the Government of the United States, and not Mr. Wilson particularly, with contempt and hatred, that they desired to hamper it in the war and in every other of its "capitalistic" activities, and finally, if possible, to overthrow it by force and substitute for it a soviet or proletarian republic.

As to the third and fourth counts of the indictment, viz, those charging incitement of resistance to the United States in the war, and curtailment of production of munitions of war, the leaflets directly violate these counts, and the jury was clearly justified in finding them guilty thereon. Nothing we can say in addition can make this any more evident than does the analysis of the papers submitted above. A general strike in the munition factories is specifically urged in the most violent manner, and this, not to improve the condition of the employees

either as to wages or hours of labor, but generally to prevent, at a most critical period of the war, the manufacture and shipment of munitions. Rebellion and revolution are passionately demanded for the purpose of creating a condition where the United States shall have an enemy in its midst as well as in its front.

In our judgment, the verdict upon the first two counts is equally justified. As to the first count, a lengthly analysis of the meaning of the words "disloyal," "scurrilous," "abusive," is not necessary. The idea which Congress had in mind was simply that contained in the definition of seditious libel as given, e. g., in Stephen's *Digest* and in Yeates's, J.'s, charge to the jury, *supra*, viz: To distinguish between bona fide criticism of the form of government, no matter how vituperative and fallacious, with a view to its reformation by lawful means, on the one hand, and appeals to passion, prejudice, and hatred, with the intent "to loosen the social bond," and thus to dissolve the state into anarchy as preliminary to the establishment by force and revolution of another form of government, on the other. The words "disloyal" and "abusive" particularly bring this out as indicating language which repudiates that tie of legiance to the United States which binds, in this respect, even aliens, and exceeds the use to which language can be properly put by a person bound by this tie when speaking of the form of government under which he lives and whose existence is the very breath of his nostrils.

The same is true of the second count, for to bring the form of government into contempt, scorn, contumely, and disrepute is but to produce the result desired by the use of the language specified in the first count. In other words, the person, who thought the language of these leaflets scurrilous, disloyal, and abusive, in the sense defined above, in its references to the form of government of the United States, would necessarily think that it was intended to bring that form of government into contempt, scorn, contumely, and disrepute.

We respectfully submit that giving the language of these leaflets the meaning attributed to them in the analysis given above—a meaning which the jury was entitled to give them—it clearly falls within the description and clearly has the legal intent ascribed to it in the first and second counts. We are entirely willing to take the judgment of any fair-minded reader upon the question whether the language of these papers is not abusive and disloyal throughout its references to the form of government of the United States, and whether the fair inference from it is not that the authors felt scorn and contempt for that form of government, and passionately desired to bring the readers into the same state of mind.

(*d*) Since the general sentences imposed (R. 242–244) did not exceed those which might lawfully have been imposed for conviction on any single count, it is sufficient, under the well established doctrine of this court, if the conviction on any one of the counts was proper.

CONCLUSION.

The judgment of the court below should be affirmed.

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Assistant Attorney General.
W. C. HERRON,
Attorney.

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ABRAMS ET AL. *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 316. Argued October 21, 22, 1919.—Decided November 10, 1919.

Evidence sufficient to sustain any one of several counts of an indictment will sustain a verdict and judgment of guilty under all, if the sentence does not exceed that which might lawfully have been imposed under any single count. P. 619.

Evidence *held* sufficient to sustain a conviction of conspiracy to violate the Espionage Act by uttering, etc., circulars intended to provoke and encourage resistance to the United States in the war with Germany, and by inciting and advocating, through such circulars, resort to a general strike of workers in ammunition factories for the purpose of curtailing production of ordnance and munitions essential to the prosecution of the war. P. 619, *et seq.*

When prosecuted under the Espionage Act, persons who sought to effectuate a plan of action which necessarily, before it could be realized, involved the defeat of the plans of the United States for the conduct of the war with Germany, must be held to have intended that result notwithstanding their ultimate purpose may have been to prevent interference with the Russian Revolution.

Affirmed.

THE case is stated in the opinion.

Mr. Harry Weinberger for plaintiffs in error.

Mr. Assistant Attorney General Stewart, with whom *Mr. W. C. Herron* was on the brief, for the United States.

MR. JUSTICE CLARKE delivered the opinion of the court.

On a single indictment, containing four counts, the five plaintiffs in error, hereinafter designated the defendants, were convicted of conspiring to violate provisions of the

Espionage Act of Congress (§ 3, Title I, of Act approved June 15, 1917, as amended May 16, 1918, 40 Stat. 553).

Each of the first three counts charged the defendants with conspiring, when the United States was at war with the Imperial Government of Germany, to unlawfully utter, print, write and publish: In the first count, "disloyal, scurrilous and abusive language about the form of Government of the United States;" in the second count, language "intended to bring the form of Government of the United States into contempt, scorn, contumely and disrepute;" and in the third count, language "intended to incite, provoke and encourage resistance to the United States in said war." The charge in the fourth count was that the defendants conspired "when the United States was at war with the Imperial German Government, . . . unlawfully and wilfully, by utterance, writing, printing and publication, to urge, incite and advocate curtailment of production of things and products, to wit, ordnance and ammunition, necessary and essential to the prosecution of the war." The offenses were charged in the language of the act of Congress.

It was charged in each count of the indictment that it was a part of the conspiracy that the defendants would attempt to accomplish their unlawful purpose by printing, writing and distributing in the City of New York many copies of a leaflet or circular, printed in the English language, and of another printed in the Yiddish language, copies of which, properly identified, were attached to the indictment.

All of the five defendants were born in Russia. They were intelligent, had considerable schooling, and at the time they were arrested they had lived in the United States terms varying from five to ten years, but none of them had applied for naturalization. Four of them testified as witnesses in their own behalf and of these, three frankly avowed that they were "rebels," "revolution-

ists," "anarchists," that they did not believe in government in any form, and they declared that they had no interest whatever in the Government of the United States. The fourth defendant testified that he was a "socialist" and believed in "a proper kind of government, not capitalistic," but in his classification the Government of the United States was "capitalistic."

It was admitted on the trial that the defendants had united to print and distribute the described circulars and that five thousand of them had been printed and distributed about the 22d day of August, 1918. The group had a meeting place in New York City, in rooms rented by defendant Abrams, under an assumed name, and there the subject of printing the circulars was discussed about two weeks before the defendants were arrested. The defendant Abrams, although not a printer, on July 27, 1918, purchased the printing outfit with which the circulars were printed and installed it in a basement room where the work was done at night. The circulars were distributed some by throwing them from a window of a building where one of the defendants was employed and others secretly, in New York City.

The defendants pleaded "not guilty," and the case of the Government consisted in showing the facts we have stated, and in introducing in evidence copies of the two printed circulars attached to the indictment, a sheet entitled "Revolutionists Unite for Action," written by the defendant Lipman, and found on him when he was arrested, and another paper, found at the headquarters of the group, and for which Abrams assumed responsibility.

Thus the conspiracy and the doing of the overt acts charged were largely admitted and were fully established.

On the record thus described it is argued, somewhat faintly, that the acts charged against the defendants were not unlawful because within the protection of that freedom

of speech and of the press which is guaranteed by the First Amendment to the Constitution of the United States, and that the entire Espionage Act is unconstitutional because in conflict with that Amendment.

This contention is sufficiently discussed and is definitely negatived in *Schenck* v. *United States* and *Baer* v. *United States*, 249 U. S. 47; and in *Frohwerk* v. *United States*, 249 U. S. 204.

The claim chiefly elaborated upon by the defendants in the oral argument and in their brief is that there is no substantial evidence in the record to support the judgment upon the verdict of guilty and that the motion of the dedendants for an instructed verdict in their favor was erroneously denied. A question of law is thus presented, which calls for an examination of the record, not for the purpose of weighing conflicting testimony, but only to determine whether there was some evidence, competent and substantial, before the jury, fairly tending to sustain the verdict. *Troxell* v. *Delaware, Lackawanna & Western R. R. Co.*, 227 U. S. 434, 442; *Lancaster* v. *Collins*, 115 U. S. 222, 225; *Chicago & Northwestern Ry. Co.* v. *Ohle*, 117 U. S. 123, 129. We shall not need to consider the sufficiency, under the rule just stated, of the evidence introduced as to all of the counts of the indictment, for, since the sentence imposed did not exceed that which might lawfully have been imposed under any single count, the judgment upon the verdict of the jury must be affirmed if the evidence is sufficient to sustain any one of the counts. *Evans* v. *United States*, 153 U. S. 608; *Claassen* v. *United States*, 142 U. S. 140; *Debs* v. *United States*, 249 U. S. 211, 216.

The first of the two articles attached to the indictment is conspicuously headed, "The Hypocrisy of the United States and her Allies." After denouncing President Wilson as a hypocrite and a coward because troops were sent into Russia, it proceeds to assail our Government in general, saying:

"His [the President's] shameful, cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington and vicinity."

It continues:

"He [the President] is too much of a coward to come out openly and say: 'We capitalistic nations cannot afford to have a proletarian republic in Russia.'"

Among the capitalistic nations Abrams testified the United States was included.

Growing more inflammatory as it proceeds, the circular culminates in:

"The Russian Revolution cries: Workers of the World! Awake! Rise! Put down your enemy and mine!

"Yes! friends, there is only one enemy of the workers of the world and that is CAPITALISM."

This is clearly an appeal to the "workers" of this country to arise and put down by force the Government of the United States which they characterize as their "hypocritical," "cowardly" and "capitalistic" enemy.

It concludes:

"Awake! Awake, you Workers of the World!

"REVOLUTIONISTS."

The second of the articles was printed in the Yiddish language and in the translation is headed, "Workers—Wake up." After referring to "his Majesty, Mr. Wilson, and the rest of the gang; dogs of all colors!", it continues:

"Workers, Russian emigrants, you who had the least belief in the honesty of *our* Government," which defendants admitted referred to the United States Government, "must now throw away all confidence, must spit in the face the false, hypocritic, military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of the war."

The purpose of this obviously was to persuade the persons to whom it was addressed to turn a deaf ear to patri-

otic appeals in behalf of the Government of the United States, and to cease to render it assistance in the prosecution of the war.

It goes on:

"With the money which you have loaned, or are going to loan them, they will make bullets not only for the Germans, but also for the Workers Soviets of Russia. *Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom.*"

It will not do to say, as is now argued, that the only intent of these defendants was to prevent injury to the Russian cause. Men must be held to have intended, and to be accountable for, the effects which their acts were likely to produce. Even if their primary purpose and intent was to aid the cause of the Russian Revolution, the plan of action which they adopted necessarily involved, before it could be realized, defeat of the war program of the United States, for the obvious effect of this appeal, if it should become effective, as they hoped it might, would be to persuade persons of character such as those whom they regarded themselves as addressing, not to aid government loans and not to work in ammunition factories, where their work would produce "bullets, bayonets, cannon" and other munitions of war, the use of which would cause the "murder" of Germans and Russians.

Again, the spirit becomes more bitter as it proceeds to declare that —

"America and her Allies have betrayed (the Workers). Their robberish aims are clear to all men. The destruction of the Russian Revolution, that is the politics of the march to Russia.

"*Workers, our reply to the barbaric intervention has to be a general strike! An open challenge* only will let the Government know that not only the Russian Worker fights for

freedom, but also *here in America lives the spirit of Revolution.*"

This is not an attempt to bring about a change of administration by candid discussion, for no matter what may have incited the outbreak on the part of the defendant anarchists, the manifest purpose of such a publication was to create an attempt to defeat the war plans of the Government of the United States, by bringing upon the country the paralysis of a general strike, thereby arresting the production of all munitions and other things essential to the conduct of the war.

This purpose is emphasized in the next paragraph, which reads:

"Do not let the Government scare you with their wild punishment in prisons, hanging and shooting. We must not and will not betray the splendid fighters of Russia. *Workers, up to fight.*"

After more of the same kind, the circular concludes:

"Woe unto those who will be in the way of progress. Let solidarity live!"

It is signed, "The Rebels."

That the interpretation we have put upon these articles, circulated in the greatest port of our land, from which great numbers of soldiers were at the time taking ship daily, and in which great quantities of war supplies of every kind were at the time being manufactured for transportation overseas, is not only the fair interpretation of them, but that it is the meaning which their authors consciously intended should be conveyed by them to others is further shown by the additional writings found in the meeting place of the defendant group and on the person of one of them. One of these circulars is headed: "Revolutionists! Unite for Action!"

After denouncing the President as "Our Kaiser" and the hypocrisy of the United States and her Allies, this article concludes:

"Socialists, Anarchists, Industrial Workers of the World, Socialists, Labor party men and other revolutionary organizations *Unite for action* and let us save the Workers' Republic of Russia!

"*Know you lovers of freedom that in order to save the Russian revolution, we must keep the armies of the allied countries busy at home.*"

Thus was again avowed the purpose to throw the country into a state of revolution if possible and to thereby frustrate the military program of the Government.

The remaining article, after denouncing the President for what is characterized as hostility to the Russian revolution, continues:

"We, the toilers of America, who believe in real liberty, shall *pledge ourselves*, in case the United States will participate in that bloody conspiracy against Russia, *to create so great a disturbance that the autocrats of America shall be compelled to keep their armies at home, and not be able to spare any for Russia.*"

It concludes with this definite threat of armed rebellion:

"If they will use arms against the Russian people to enforce their standard of order, *so will we use arms*, and they shall never see the ruin of the Russian Revolution."

These excerpts sufficiently show, that while the immediate occasion for this particular outbreak of lawlessness, on the part of the defendant alien anarchists, may have been resentment caused by our Government sending troops into Russia as a strategic operation against the Germans on the eastern battle front, yet the plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing and if possible defeating the military plans of the Government in Europe. A technical distinction may perhaps be taken between disloyal and abusive language applied to the *form* of our government or language intended to bring the *form*

of our government into contempt and disrepute, and language of like character and intended to produce like results directed against the President and Congress, the agencies through which that form of government must function in time of war. But it is not necessary to a decision of this case to consider whether such distinction is vital or merely formal, for the language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war, as the third count runs, and, the defendants, in terms, plainly urged and advocated a resort to a general strike of workers in ammunition factories for the purpose of curtailing the production of ordnance and munitions necessary and essential to the prosecution of the war as is charged in the fourth count. Thus it is clear not only that some evidence but that much persuasive evidence was before the jury tending to prove that the defendants were guilty as charged in both the third and fourth counts of the indictment and under the long established rule of law hereinbefore stated the judgment of the District Court must be

Affirmed.

MR. JUSTICE HOLMES dissenting.

This indictment is founded wholly upon the publication of two leaflets which I shall describe in a moment. The first count charges a conspiracy pending the war with Germany to publish abusive language about the form of government of the United States, laying the preparation and publishing of the first leaflet as overt acts. The second count charges a conspiracy pending the war to publish language intended to bring the form of government into contempt, laying the preparation and publishing of the two leaflets as overt acts. The third count alleges a conspiracy to encourage resistance to the United States in the same war and to attempt to effectuate the purpose by publishing the same leaflets. The fourth count lays a con-

spiracy to incite curtailment of production of things necessary to the prosecution of the war and to attempt to accomplish it by publishing the second leaflet to which I have referred.

The first of these leaflets says that the President's cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington. It intimates that "German militarism combined with allied capitalism to crush the Russian revolution"—goes on that the tyrants of the world fight each other until they see a common enemy—working class enlightenment, when they combine to crush it; and that now militarism and capitalism combined, though not openly, to crush the Russian revolution. It says that there is only one enemy of the workers of the world and that is capitalism; that it is a crime for workers of America, &c., to fight the workers' republic of Russia, and ends "Awake! Awake, you Workers of the World! Revolutionists." A note adds "It is absurd to call us pro-German. We hate and despise German militarism more than do you hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House."

The other leaflet, headed "Workers—Wake Up," with abusive language says that America together with the Allies will march for Russia to help the Czecko-Slovaks in their struggle against the Bolsheviki, and that this time the hypocrites shall not fool the Russian emigrants and friends of Russia in America. It tells the Russian emigrants that they now must spit in the face of the false military propaganda by which their sympathy and help to the prosecution of the war have been called forth and says that with the money they have lent or are going to lend "they will make bullets not only for the Germans but also for the Workers Soviets of Russia," and further, "Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Ger-

mans, but also your dearest, best, who are in Russia and are fighting for freedom." It then appeals to the same Russian emigrants at some length not to consent to the "inquisitionary expedition to Russia," and says that the destruction of the Russian revolution is "the politics of the march to Russia." The leaflet winds up by saying "Workers, our reply to this barbaric intervention has to be a general strike!," and after a few words on the spirit of revolution, exhortations not to be afraid, and some usual tall talk ends "Woe unto those who will be in the way of progress. Let solidarity live! The Rebels."

No argument seems to me necessary to show that these pronunciamentos in no way attack the form of government of the United States, or that they do not support either of the first two counts. What little I have to say about the third count may be postponed until I have considered the fourth. With regard to that it seems too plain to be denied that the suggestion to workers in the ammunition factories that they are producing bullets to murder their dearest, and the further advocacy of a general strike, both in the second leaflet, do urge curtailment of production of things necessary to the prosecution of the war within the meaning of the Act of May 16, 1918, c. 75, 40 Stat. 553, amending § 3 of the earlier Act of 1917. But to make the conduct criminal that statute requires that it should be "with intent by such curtailment to cripple or hinder the United States in the prosecution of the war." It seems to me that no such intent is proved.

I am aware of course that the word intent as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. A man may have to pay damages, may be sent to prison, at common law might be hanged, if at the time of his act

he knew facts from which common experience showed that the consequences would follow, whether he individually could foresee them or not. But, when words are used exactly, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. It may be obvious, and obvious to the actor, that the consequence will follow, and he may be liable for it even if he regrets it, but he does not do the act with intent to produce it unless the aim to produce it is the proximate motive of the specific act, although there may be some deeper motive behind.

It seems to me that this statute must be taken to use its words in a strict and accurate sense. They would be absurd in any other. A patriot might think that we were wasting money on aeroplanes, or making more cannon of a certain kind than we needed, and might advocate curtailment with success, yet even if it turned out that the curtailment hindered and was thought by other minds to have been obviously likely to hinder the United States in the prosecution of the war, no one would hold such conduct a crime. I admit that my illustration does not answer all that might be said but it is enough to show what I think and to let me pass to a more important aspect of the case. I refer to the First Amendment to the Constitution that Congress shall make no law abridging the freedom of speech.

I never have seen any reason to doubt that the questions of law that alone were before this Court in the cases of *Schenck*, *Frohwerk* and *Debs*, 249 U. S. 47, 204, 211, were rightly decided. I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is

greater in time of war than in time of peace because war opens dangers that do not exist at other times.

But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. Publishing those opinions for the very purpose of obstructing however, might indicate a greater danger and at any rate would have the quality of an attempt. So I assume that the second leaflet if published for the purposes alleged in the fourth count might be punishable. But it seems pretty clear to me that nothing less than that would bring these papers within the scope of this law. An actual intent in the sense that I have explained is necessary to constitute an attempt, where a further act of the same individual is required to complete the substantive crime, for reasons given in *Swift & Co.* v. *United States*, 196 U. S. 375, 396. It is necessary where the success of the attempt depends upon others because if that intent is not present the actor's aim may be accomplished without bringing about the evils sought to be checked. An intent to prevent interference with the revolution in Russia might have been satisfied without any hindrance to carrying on the war in which we were engaged.

I do not see how anyone can find the intent required by the statute in any of the defendants' words. The second leaflet is the only one that affords even a foundation for the charge, and there, without invoking the hatred of German militarism expressed in the former one, it is evi-

dent from the beginning to the end that the only object of the paper is to help Russia and stop American intervention there against the popular government—not to impede the United States in the war that it was carrying on. To say that two phrases taken literally might import a suggestion of conduct that would have interference with the war as an indirect and probably undesired effect seems to me by no means enough to show an attempt to produce that effect.

I return for a moment to the third count. That charges an intent to provoke resistance to the United States in its war with Germany. Taking the clause in the statute that deals with that in connection with the other elaborate provisions of the act, I think that resistance to the United States means some forcible act of opposition to some proceeding of the United States in pursuance of the war. I think the intent must be the specific intent that I have described and for the reasons that I have given I think that no such intent was proved or existed in fact. I also think that there is no hint at resistance to the United States as I construe the phrase.

In this case sentences of twenty years imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them. Even if I am technically wrong and enough can be squeezed from these poor and puny anonymities to turn the color of legal litmus paper; I will add, even if what I think the necessary intent were shown; the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges but for the creed that they avow—a creed that I believe to be the creed of ignorance and immaturity when honestly held, as I see no reason to doubt that it was held here, but which, although made the subject of examination at the

trial, no one has a right even to consider in dealing with the charges before the Court.

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants

making any exception to the sweeping command, "Congress shall make no law . . . abridging the freedom of speech." Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

MR. JUSTICE BRANDEIS concurs with the foregoing opinion.